(R-82-1487)

RESOLUTION NUMBER R- 255972

Adopted on MAR 9 1982

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

That the City Manager is hereby authorized to execute an Agreement between the City of San Diego and the County of San Diego, which Agreement provides for the City to administer the lease and development of a portion of Cowles Mountain for an electronic communications facility, under the terms and conditions set forth in that Agreement on file in the office of the City Clerk as Document No. RR- 255972 .

APPROVED: John W. Witt, City Attorney

By _____
Harold O. Valderhaug
Deputy City Attorney

HOV:ps
3/3/82
Or.Dept:Prop.
Job: 216651
Form=r.none

5405

Passed and adopted by the Council of The City of San Diego on MAR 9 1982, by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	☑	☐	☐	☐
Bill Cleator	☐	☐	☑	☐
Susan Golding	☑	☐	☐	☐
Leon L. Williams	☑	☐	☐	☐
Ed Struiksma	☑	☐	☐	☐
Mike Gotch	☑	☐	☐	☐
Dick Murphy	☑	☐	☐	☐
Lucy Killea	☑	☐	☐	☐
Mayor Pete Wilson	☑	☐	☐	☐

AUTHENTICATED BY:

PETE WILSON,
Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR,
City Clerk of The City of San Diego, California.

By Barbara Bernidge, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-255972 Adopted MAR 9 1982

CC-1276 (REV. 1-82)

COPY 21665

AGREEMENT BY AND BETWEEN THE COUNTY OF SAN DIEGO AND THE CITY OF SAN DIEGO FOR DEVELOPMENT OF AN ELECTRONIC COMMUNICATIONS FACILITY ON COWLES MOUNTAIN, SAN DIEGO, CALIFORNIA

THIS AGREEMENT is entered into this 9th day of March, 1982, by and between the County of San Diego, hereinafter referred to as "County," and the City of San Diego, hereinafter referred to as "City," for the purpose of administering that jointly owned real property known as Cowles Mountain Electronic Communications Site and hereinafter referred to as "Premises."

RECITALS

WHEREAS, County and City jointly own undivided one-half interests in real property located in the City of San Diego on Cowles Mountain, more particularly described as follows:

All that portion of the Partition of Lot 70 of Rancho Mission of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof made in action entitled "San Diego Realty Company, a Corporation vs. Maria Y. Olvera De Toro, et al", said Map being filed in the Office of the County Clerk of said County in Civil Case No. 15191 as conveyed to said County of San Diego by deed recorded January 2, 1975, at File/Page No. 75-000097 in the Office of the County Recorder of said County.

EXCEPTING THEREFROM that portion lying below an elevation of 1,550 feet above mean sea level based on the U.S. Coast and Geodetic Survey Sea Level Datum of 1929.

; and

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FILED MAR 9 1982
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

WHEREAS, said real property is particularly geographically suited for the use of electronic communications facilities for governmental as well as private commercial use; and

WHEREAS, City and County desire to derive revenue from said commercial use as well as to employ the said real property for governmental purposes; and

WHEREAS, it is necessary that a suitable facility and improvements be placed on the land in order that governmental and commercial uses can be realized; and

WHEREAS, County desires to designate City as the agency to solicit for and receive proposals for development, conduct negotiations with proposers and developers, and administer a lease resulting from said negotiations; and

WHEREAS, City and County desire to occupy portions of a facility to be constructed and improvements to be placed on said land by a commercial developer; NOW, THEREFORE,

In consideration of the recitals and the mutual obligations of the parties as herein expressed, the City and the County do hereby agree as follows:

1. ADMINISTRATION. This Agreement (hereinafter referred to as "Agreement") shall be administered by the City of San Diego in accordance with the laws applicable to the City's exercise of authority hereinafter specified. The County shall be represented by the Director, Department of General Services, County of San Diego, (hereinafter referred to as "County Agreement Administrator"), and on behalf of City by the City Manager (hereinafter referred to as "City Agreement Administrator"). Notices to the respective Agreement

Administrators shall be forwarded as follows:

To County	To City
Director Department of General Services County of San Diego 5555 Overland Avenue, Bldg. 2 San Diego, CA 92123	City Manager City of San Diego City Administration Bldg. 202 C Street San Diego, CA 92101

2. DESCRIPTION. The Premises comprise that real property as above described and which are delineated on Exhibit "A" attached hereto and by this reference made a part hereof. Said real property (hereinafter referred to as "Premises") is to be administered on the terms and conditions hereinafter set forth.

3. TERM. This Agreement is effective on the date first above written. The term shall continue throughout the term of the original or any subsequent lease agreements entered into between the City as Lessor and any other party as Lessee for the Premises. This Agreement can be terminated subsequent to the expiration of any lease term at any time by either of the parties hereto by giving 180 days prior written notice to the other party.

4. PURPOSE. The purpose of this Agreement is to administer that jointly-owned, above-described, real property and to designate the City as the agency responsible for such administration and for solicitations for and receipt of proposals for development, conducting negotiations with proposers and developers, and the administration of a lease resulting from said negotiations.

5. CONTRACTING AUTHORITY. City shall have the authority, on behalf of itself and the County to conduct such procedures and engage in such negotiations and enter into such contracts or

other commitments as it deems necessary to fulfill the purpose of this Agreement. These include, but may not be limited to, solicitations for and receipt of proposals to lease and develop the premises, conducting negotiations with proposers and developers, entering into options to lease, leases and subleases, and to administer any such options to lease, leases or subleases as may be entered into. City shall also have authority to grant easements upon such premises for the proper development of the premises for the purposes of this Agreement. All authority granted herein shall be exercised in accordance with the provisions of law applicable to the exercise of such authority by the City of San Diego.

6. FUNDS. The Treasurer and the Auditor of City or their authorized representatives are hereby designated as the receivers and depositaries of all funds derived from selling options to lease, leasing or subleasing of the Premises. They shall:

(a) Receive and receipt for all money received pursuant to this Agreement and place it in the City treasury to the credit of a special Mission Trails Regional Park Fund;

(b) Be responsible for the safekeeping and disbursement of all Mission Trails Fund money so held;

(c) Be responsible and make certain that all interest accrued to the Fund be attributed to the Mission Trails account;

(d) Pay all sums, when due and owed by the Fund, only upon duly authorized checks of City acting as the

Fiscal Agent;

(e) Verify and report in writing, on the first day of April and October of each year, to the City's and to the County's respective Agreement Administrators.

7. CHARGES FOR BILLINGS. Charges of City and County for financial and administrative services in connection with this Agreement shall be submitted to the City Manager for approval. After approval they shall be forwarded to the City Auditor and Comptroller and paid from the Mission Trails Regional Park Fund. All surplus balances shall be placed and retained in the Fund to be expended solely and exclusively to acquire additional property or to pay for improvements to the Mission Trails Regional Park. Each year the Mission Trails Regional Park Task Force shall recommend to the City Council and the Board of Supervisors projects for which the surplus balances may be expended. In the event either the City Council or the Board of Supervisors do not agree with the recommendations of the Task Force, the City Council and the County Board of Supervisors may each require the expenditure of their respective fifty percent portion of the Fund for any Mission Trails Regional Park acquisitions or improvements. Any sums heretofore expended by the parties hereto in connection with the administration of the Premises shall be credited to their respective accounts. Costs of administration heretofore expended include, but are not necessarily limited to, preparation of appropriate documentation, accounting costs, negotiations with prospective developers, promotion and marketing, and shall not exceed $10,000.00.

8. ANNUAL AGREEMENT AUDIT. The City Auditor and Comptroller shall make an audit of those accounts and records of the Mission Trails Regional Park Fund each fiscal year and shall report results of the audit concurrently with the October report as set forth in Clause 6 (e) above. Costs of the audit shall be borne by the Fund and shall be a charge against any unencumbered funds therein and available for the purpose. The County may also audit the accounts and records, or upon written request to the City Auditor and Comptroller, jointly participate in the City's audit.

9. HOLD HARMLESS. Each of the parties hereto shall indemnify and defend their respective officers and employees against any causes of action, liability, damage, and expense, including reasonable attorney's fees, for judicial relief of any kind, for damage to property of any kind whatsoever and to whomever belonging, including without limitation Lessees, Sublessees or their employees, or injury or death of any person or persons, including without limitation Lessees or Sublessees or their employees, resulting from the performance of this Agreement, or arising from the use and operation of the Premises or any defect in any part therof. If the City, the County or both should become liable for any causes of action, damages, or expenses, including reasonable attorney's fees, resulting from actions undertaken in performance of this Agreement, all costs incurred thereby shall be borne equally by City and County.

10. DISTRIBUTION OF ASSETS. Upon termination of this Agreement, any assets remaining shall be divided equally between City and County and those improvements then existing on the

Premises shall continue to be held in joint ownership.

IN WITNESS WHEREOF, each of the following parties has caused this Agreement to be executed pursuant to authority given by its elected governing body.

CITY OF SAN DIEGO

By Elaine M. Baldo
ASSISTANT TO THE City Manager

COUNTY OF SAN DIEGO

By Porter D Cremans
Clerk of the Board
of Supervisors

Approved as to form
and legality:

By
Deputy City Attorney

Approved as to form
and legality:

By Donald L. Clark
County Counsel

By Lewis P. Zellinger
Deputy County Counsel
6/16/82

Approved and/or authorized by the Board
of Supervisors of the County of San Diego

JUN 29 1982 #10

Porter D Cremans
Clerk of the Board of Supervisors

R- 255972