

AN ORDINANCE

98474

AUTHORIZING A TWENTY-FIVE YEAR GROUND LEASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND TOWER ASSET SUB, INC., A WHOLLY OWNED SUBSIDIARY OF SPECTRASITE COMMUNICATIONS, INC., FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING, SECURING AND OPERATING A COMMUNICATIONS FACILITY AT MEDINA RIVER PARK FOR AN INITIAL ANNUAL AMOUNT OF \$7,300.00 SUBJECT TO ANNUAL ADJUSTMENT, PLUS ADDITIONAL CONSIDERATION FOR RELOCATING EXISTING FACILITIES IN SUPPORT OF THE CITY'S OBLIGATIONS UNDER THE PROJECT STARBRIGHT AGREEMENT.

* * * * *

WHEREAS, the City of San Antonio ("City"), other governmental entities; various utility providers and the City of San Antonio, Texas, Starbright Industrial Development Corporation (Corporation") have negotiated an agreement with the Toyota Motor Manufacturing North America, Inc. ("Toyota"), under which certain assistance would be provided to Toyota to assist it in the development of a manufacturing or assembly facility in San Antonio; and,

WHEREAS, one portion of that agreement involves the acquisition of certain property and conveyance to Toyota of certain real property after certain site clearing tasks have been accomplished; and,

WHEREAS, SpectraSite Communications, Inc. (SpectraSite), has a long term lease on certain property subject to the Project Starbright Agreement upon which it maintains an existing Communications tower and equipment; and,

WHEREAS, SpectraSite has agreed to relocate its existing facilities in a timely manner to assist the City in completion of the City's obligations under the Project Starbright Agreement in exchange for payment of relocation costs (to be paid by separate agreement between SpectraSite and the City of San Antonio, Texas, Starbright Industrial Development Corporation) and a new lease on nearby property which is owned by the City on terms and conditions equivalent to its preexisting lease; and,

WHEREAS, the proposed use of the property which is the subject, is the only practical and feasible alternative to accomplish the City's needs and is found to be reasonably compatible with the intended uses of the adjacent City property; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The twenty-five year lease agreement between the City and Tower Asset Sub, Inc., a wholly owned subsidiary of SpectraSite Communications, Inc., for the use of certain City property described in the attached lease agreement is approved. The City Manager or any designee of the City Manager is authorized to negotiate and execute the final agreement on substantially the terms and conditions set out in the attached draft agreement. If final agreement

is not reached on or before the forty-fifth day after the effective date of this ordinance, then this approval shall terminate.

SECTION 2. This ordinance shall be effective immediately if it receives eight affirmative votes. Otherwise, it shall be effective on November 23, 2003.

PASSED AND APPROVED this the 13th day of November, 2003.

M A Y O R

EDWARD D. GARZA

ATTEST:
City Clerk

APPROVED AS TO FORM:
for City Attorney

03-41

MEETING OF THE CITY COUNCIL

ALAMO DOME
ASSET MANAGEMENT
AVIATION
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
COUNCIL OFFICES
CULTURAL AFFAIRS
CUSTOMER SERVICE/311 SYSTEM
DEVELOPMENT SERVICES
HOUSE NUMBERING
LAND DEVELOPMENT SERVICES
TRAFFIC & DRAINAGE PLAN REVIEW
ECONOMIC DEVELOPMENT
ENVIRONMENTAL SERVICES
SOLID WASTE
EXTERNAL RELATIONS
PUBLIC INFORMATION OFFICE
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - PUBLIC UTILITIES SUPERVISOR
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
MANAGEMENT & BUDGET (OFFICE OF) OMB
MAYOR'S OFFICE
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
NEIGHBORHOOD ACTION
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT - NEIGHBORHOOD PLNG;
URBAN DESIGN/HISTORIC PRESERVATION
DISABILITY ACCESS OFFICE
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
PARKING DIVISION
REAL ESTATE DIVISION
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: 39

DATE: NOV 13 2003

MOTION: Psy Hull

ORDINANCE NUMBER: 98474

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

NAME	ROLL	AYE	NAY
ROGER O. FLORES JR. District 1		✓	
JOEL WILLIAMS District 2		✓	
RON SEGOVIA District 3		absent	
RICHARD PEREZ District 4		✓	
PATTI RADLE District 5		✓	
ENRIQUE M. BARRERA District 6		✓	
JULIAN CASTRO District 7		✓	
ART A. HALL District 8		✓	
CARROLL SCHUBERT District 9		absent	
CHRISTOPHER "CHIP" HAASS District 10		✓	
EDWARD D. GARZA Mayor		✓	

FILE } Starbright Industrial
Development Corp.

03-41

MEMORANDUM OF GROUND LEASE AGREEMENT

This Memorandum of Ground Lease Agreement ("Memorandum") is entered into this 12th day of January, 2005, by and between **CITY OF SAN ANTONIO**, a Texas Home Rule Municipal Corporation, with a mailing address of City of San Antonio, City Hall-Third Floor, P.O. Box 839966, San Antonio, TX 78283-3966 (hereinafter referred to as "Lessor") and **TOWER ASSET SUB, INC.**, a Delaware corporation with an address of 100 Regency Forest Drive, Suite 400, Cary, North Carolina 27511 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into that certain Ground Lease Agreement dated December 19, 2003 (the "Lease") for certain real property and easements as described in **Attachment B** attached hereto (collectively, the "Premises"), which are a portion of that certain parcel of real property located in the City of San Antonio, County of Bexar, State of Texas, described in **Attachment A** attached hereto (the "Land").
2. The Lease commenced on January 1, 2004 for an initial term of five (5) years with four (4) five year renewal options.
3. Notwithstanding anything to the contrary in the Lease, the description of the Premises shall be as shown on **Attachment B** attached hereto and incorporated herein by reference.
4. The purpose of this Memorandum is to give record notice of the Lease and of the rights created thereby, all of which are hereby confirmed. In the event of a conflict between the terms of this Memorandum or the addition of any terms in this Memorandum which are not contained in the Lease, such conflicting or additional terms shall be deemed to be a part of the Lease and shall otherwise amend the Lease and be controlling. The terms of the Lease are incorporated herein by reference.

-SIGNATURES APPEAR ON NEXT PAGE-

IN WITNESS WHEREOF, the parties have executed this Memorandum under seal as of the date first set forth above

WITNESSES:

Krystal Strong
Print Name: Krystal Strong

Mary Perez
Print Name: Mary Perez

LESSOR:
City of San Antonio,
a Texas Home Rule Corporation

Christopher J. Brady
Christopher J. Brady (Seal) [Signature]
Print Name:
Date: Jan 12, 2005

NOTARY ACKNOWLEDGEMENT FOR LESSOR:

State of TEXAS

County of BEXAR

This instrument was acknowledged before me by Christopher J. Brady, who is the Asst City Manager of City of San Antonio, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, this 12th day of January, 2005.

Maria Sylvia Salinas
Notary Public Maria Sylvia Salinas
My Commission Expires: 03-10-08

NOTARY SEAL



WITNESSES:

Raymond W. Goodwin

Print Name: Raymond W. Goodwin

Margaret A. Robinson

Print Name: Margaret A. Robinson

LESSEE:

Tower Asset Sub, Inc.,
a Delaware corporation

[Signature] (Seal)

Print Name:

Title: **DANIEL E. REBEOR**
Director, Real Estate Operations
Date: **A Duty Authorized Individual**

ATTEST:

[Signature]

Dennis Jay Sargent Jr.
Assistant Secretary
[AFFIX CORPORATE SEAL]

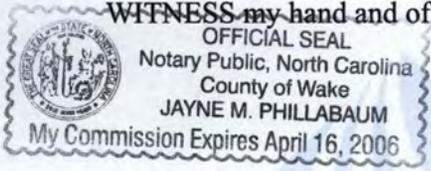


State of North Carolina

County of Wake

This instrument was acknowledged before me by Daniel E. Rebeor, who is the Director, Real Estate Operations of Tower Asset Sub, Inc., a Delaware Corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, this 6th day of November, 2004.



Signature Jayne M. Phillabaum
Jayne M. Phillabaum

My commission expires: 4-16-06

NOTARY SEAL

ATTACHMENT "A"
Land

Site No.: TX-1201

Site Name: Medina River 2
Address: 16238 Watson Rd.
San Antonio, Texas 78073

The Land is described as follows:

BEING THAT ONE CERTAIN TRACT OF LAND CONTAINING APPROXIMATELY 241.758 ACRES OF LAND CONVEYED TO THE CITY OF SAN ANTONIO BY DEED RECORDED IN VOLUME 4991, PAGE 1906 OF THE REAL PROPERTY RECORDS OF BEXAR COUNTY, TEXAS.

ATTACHMENT "B"
Premises

Site No.: TX-1201

Site Name: Medina River 2
Address: 16238 Watson Rd.
San Antonio, Texas 78073

The Premises are described as follows:

Field notes of a 0.230 of an acre tract of land situated in Bexar County, Texas and being out of the Ignacio Perez Survey No. 15, Abstract 13, County Block 4297, and being part of that 241.758 acre tract conveyed to the City of San Antonio, by deed recorded in Volume 4991, Page 1906 of the Real Property Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a 1/2" iron pin set at the southeast corner of this tract, said point being N 76° 45' 52" W. 26.75 feet, S 34° 02' 59" W. 403.22 feet and N 76° 11' 25" W. 16.20 feet from a fence corner in the south line of Watson Road (proposed Spur 66) at the northeast corner of said 241.758 acre tract.

Thence N 76° 11' 25" W. 100.00 feet to a 1/2" iron pin set at the southwest corner of this tract.

Thence N 13° 48' 35" E. 100.00 feet to a 1/2" iron pin set at the northwest corner of this tract.

Thence S 76° 11' 25" E. 100.00 feet to a 1/2" iron pin set at the northeast corner of this tract.

Thence S 13° 48' 35" W. 100.00 feet to the place of Beginning and containing 0.230 of an acre of land according to a survey made on the ground.

GAS, ELECTRIC AND TELEPHONE EASEMENT

Field notes of a 20.00 foot wide Gas, Electric and Telephone Easement situated in Bexar County, Texas and being out of the Ignacio Perez Survey No. 15, Abstract 13, County Block 4297, and being over part of that 241.758 acre tract conveyed to the City of San Antonio, by deed recorded in Volume 4991, Page 1906 of the Real Property Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a point in fence line in the south line of Watson Road (proposed Spur 66), being the northeast corner of this easement said point being N 76° 45' 52" W. 26.75 feet from a fence corner at the northeast corner of said 241.758 acre tract.

Thence S 34° 02' 59" W. 403.22 feet to a point at the southeast corner of this easement.

Thence N 76° 11' 25" W. 16.20 feet to a 1/2" iron pin set at the southwest corner of this easement, being the southeast corner of a 0.230 of an acre tract, this day surveyed.

Thence N 13° 48' 35" E. 20.00 feet along the east line of said 0.230 of an acre tract, to a point at

ATTACHMENT "B" (Continued)

a northwest corner of this easement.

Thence S 76° 11' 25" E. 2.26 feet to a point at an interior corner of this easement.

Thence N 34° 02' 59" E. 381.68 feet to a point in fence line in the south line of Watson Road at the northwest corner of this easement.

Thence S 76° 45' 52" E. 21.40 feet with fence along the south line of Watson Road, to the place of Beginning and covering 0.184 of an acre of land according to a survey made on the ground.

ACCESS EASEMENT

Field notes of a 20.00 foot wide Access Easement situated in Bexar County, Texas and being out of the Ignacio Perez Survey No. 15, Abstract 13, County Block 4297, and being over part of that 241.758 acre tract conveyed to the City of San Antonio, by deed recorded in Volume 4991, Page 1906 of the Real Property Records of Bexar County, Texas and being more particularly described by metes and bounds as follows:

Beginning at a point in fence line in the south line of Watson Road (proposed Spur 66), being a northeast corner of this easement said point being N 76° 45' 52" W. 382.75 feet from a fence corner at the northeast corner of said 241.758 acre tract.

Thence S 17° 01' 26" W. 263.78 feet to a point at an interior corner of this easement.

Thence S 57° 22' 54" E. 121.56 feet to a point in the west line of a 0.230 of an acre Lease Site, this day surveyed, being a northeast corner of this easement.

Thence S 13° 48' 35" W. 21.13 feet along the west line of said 0.230 of an acre Lease Site to a point at the southeast corner of this easement.

Thence along the south line of this easement, as follows:

N 57° 22' 54" W. 10.00 feet to a point at a corner.

S 32° 37' 06" W. 15.00 feet to a point at a corner.

N 57° 22' 54" W. 12.00 feet to a point at a corner.

N 32° 37' 06" E. 15.00 feet to a point at a corner.

N 57° 22' 54" W. 121.56 feet to a point at the southwest corner of this easement.

Thence N 17° 01' 26" E. 277.64 feet to a point in the south line of Watson Road (Spur 66), at the northwest corner of this easement.

Thence S 76° 45' 52" E. 20.04 feet with fence along the south line of Watson Road (Spur 66), to the place of Beginning and covering 0.189 of an acre of land according to a survey made on the ground.

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT ("*Lease*") is made effective as of the date of the latter signature hereof (the "*Execution Date*") and is by and between Lessee and Lessor.

RECITALS

- A. WHEREAS, Lessor is the owner of that certain parcel of land (the "*Property*") located in the County of Bexar, State of Texas, as more particularly described on Exhibit A; and
- B. WHEREAS, Lessor desires to lease to Lessee and Lessee desires to lease from Lessor a portion of the Property as more particularly described on Exhibit B (the "*Premises*"), together with access for ingress and egress and the installation and maintenance of utilities (collectively, the "*Access*") being approximately located as shown on [Exhibit B and Exhibit C].

NOW, THEREFORE, in consideration of the sum of \$10.00, the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt, adequacy and sufficiency of all of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Business Terms. For the purposes of this Lease, the following capitalized terms shall have the meanings set forth in this paragraph 1.

- (a) **Lessee:** Tower Asset Sub, Inc., a Delaware corporation.
- (b) **Lessee's Notice Address:** Tower Asset Sub, Inc.
c/o SpectraSite Communications, Inc.
100 Regency Forest Drive, Suite 400
Cary, NC 27511
Attention: Property Management

with a copy to: Tower Asset Sub, Inc. _____
c/o SpectraSite Communications, Inc.
100 Regency Forest Drive, Suite 400
Cary, NC 27511
Attention: Legal Department – Wireless Legal Group

- (c) **Lessee's Billing Address:** _____

- (d) **Lessor:** CITY OF SAN ANTONIO, a Texas Municipal Corporation.

Lessor's Notice Address: City Clerk
City of San Antonio
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

with a copy to: Director of Parks and Recreation
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

(e) **Lessor's Payment Address:** City of San Antonio
Finance Division of Treasury,
Medina River Park,
Parks & Recreation Department
P.O. Box 839975
San Antonio, Texas 78283-3975

(f) **Lessor's Tax ID Number:** _____ 74-6002070 _____

(g) **Commencement Date:** The _____ day of _____, 20____.

(h) **Rent:** The annual amount of \$7,300.00, is payable in equal monthly payments of \$608.33 during the first year of the Initial Term and the amount shall be increased each year in the amount of 4% for each succeeding year of the Initial Term.

(i) **Initial Term:** 5 years, commencing on the Commencement Date (as defined in paragraph 1(g) hereof) and continuing until midnight on the last day of the calendar month in which the 5th anniversary of the Commencement Date occurs, provided however, if the Commencement Date occurs on the 1st day of a calendar month, then the Initial Term shall continue until midnight of the day immediately prior to the 5th anniversary of the Commencement Date.

(j) **Renewal Terms:** Subject to paragraph 3(b) hereof, each of the 4 successive periods of 5 years each, with the first Renewal Term commencing upon the expiration of the Initial Term and each subsequent Renewal Term commencing upon the expiration of the immediately preceding Renewal Term.

(k) Lessee shall have a period of time commencing on the Effective Date of this Agreement and ending on December 15, 2003 the "**Inspection Period**") in which to determine whether the Premises is suitable and in which to obtain all necessary permits and authorizations for the construction of a cell tower on the Premises and for the Cell Tower Operations on the Premises. In the event Lessee is unable to obtain from the City of San Antonio any necessary City Permit, authorization or favorable zoning for such construction or Cell Tower Operations on the Premises, Lessee may, by written notice to the City of San Antonio in its role as Lessor under this Lease prior to the expiration of the Inspection Period, extend the Inspection Period as necessary; provided however, that in no event shall the Inspection Period be extended past December 31, 2003. If Lessee determines in its sole discretion that the Premises is not suitable, Lessee may terminate this Agreement by (i) giving the Lessor notice of such election prior to the expiration of the Inspection Period, and (ii) terminating the Tower Relocation Agreement between Tower Asset Sub, Inc, and the City of San Antonio, Texas, Starbright Industrial Development Corporation. If Lessee does not terminate this Agreement prior to the expiration of the Inspection Period, it will thereby be confirming that the Premises are suitable.

2. Use.

(a) Lessee shall be permitted to use the Premises for the purpose of constructing, maintaining, securing and operating a communications facility, including the construction or installation and maintenance of a tower of a height not to exceed _____, structural tower base, communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, and related facilities on the Premises (collectively, the "**Tower Facilities**"), to facilitate the use of the Premises as a site for the transmission and receipt of wireless communication signals including, but not limited to, voice, data and internet transmissions and for any other uses which are incidental thereto (the "**Intended Use**"). Lessee may, at its sole expense, use any and all appropriate means of restricting access to the Premises or the Tower Facilities, which shall include, at a minimum and without limitation, construction of a fence. Lessee may, at Lessee's sole expense, construct Lessee's

Tower Facilities on the Premises to meet Lessee's needs and Lessee shall maintain the Premises in a reasonable condition throughout the Initial Term and any Renewal Terms, reasonable wear and tear and damage from casualty and condemnation excepted. Lessor shall cooperate with Lessee in executing any documents necessary to protect Lessee's rights under this Lease or facilitate Lessee's and Lessee's sublessees' and licensees' use of the Premises and will take such further action as Lessee may reasonably require to fulfill the intent of this Lease.

(b) Lessee's obligations hereunder are expressly conditioned upon Lessee's ability to obtain, maintain, renew and reinstate all of the certificates, permits, licenses, zoning, variances and other approvals which may be required from any federal, state or local authority as well as any necessary Access (collectively, the "**Approvals**"). Lessor shall cooperate with Lessee, at no out-of-pocket expense to Lessor, in its efforts to obtain the Approvals, and Lessor shall take no action which would adversely affect the status of the Premises with respect to Lessee's Intended Use thereof. If (i) any application by Lessee for any one of the Approvals is finally denied or rejected, or is otherwise withdrawn or terminated or (ii) if there shall exist any matters affecting Lessor's title to the Property which prevent Lessee from using the Premises for Lessee's Intended Use, then Lessee shall have the right to terminate this Lease upon written notice to Lessor and Lessor shall, within 30 days of such termination, refund to Lessee any Rent paid by Lessee applicable to the period subsequent to such termination.

(c) Lessor agrees to execute any and all documents necessary in Lessee's and Lessor's joint reasonable judgment to protect Lessee's rights or the rights of Lessee's sublessees or licensees under this Lease, to facilitate Lessee's use of the Premises and the Access as contemplated under this Lease, or to allow Lessee to obtain, maintain, renew or reinstate the Approvals. All documents provided by Lessee for execution shall be prepared by Lessee on Lessee's standard forms or, in the case of zoning applications or other situations regulated by governmental bodies, on forms specified by such governmental body. Documents provided for execution shall be limited to, memorandums of lease, memorandums of amendment, and zoning applications and other related documents required to obtain zoning approval.

3. Term.

(a) *Initial Term.* The Initial Term of this Lease shall be as set forth in paragraph 1(i).

(b) *Renewal Terms.* Lessee is hereby granted and shall, if not at that time in material default of this Lease, have, for good and valuable consideration given, an option to extend the term of this Lease for each of the Renewal Terms. Each Renewal Term shall be on the same terms and conditions set forth in this Lease except that Rent shall escalate as provided in paragraph 1(h). Each Renewal Term shall be automatically effective, unless Lessee notifies Lessor in writing of Lessee's intention not to renew the Lease at least 30 days prior to the expiration of the Term which is then in effect. Upon written request from Lessor, Lessee shall confirm in writing one or more renewals of the term of this agreement.

4. Consideration.

(a) Commencing on the Commencement Date, Rent shall be due and payable in advance on the first day of each calendar month to Lessor at Lessor's Payment Address. Rent shall be prorated for any partial months, including, without limitation, the month in which the Commencement Date occurs.

(b) If this Lease is terminated at a time other than on the day immediately preceding the anniversary of the Commencement Date, Rent shall be prorated as of the effective date of such termination (the "**Termination Date**"). If this Lease is terminated for any reason other than nonpayment of Rent, all Rent paid in advance for the period after the Termination Date shall be refunded to Lessee by Lessor within 30 days of the Termination Date.

5. Conditions Subsequent. If Lessee's Intended Use of the Premises is actually or constructively prohibited through no fault of Lessee, then without limiting any other remedy in law or equity, Lessee shall have the option to terminate this Lease upon written notice to Lessor.

6. Interference. Lessor shall not use, nor shall Lessor permit its lessees, licensees, invitees or agents to use any portion of the Property in any way that interferes with Lessee's Intended Use of the Premises. Such interference shall be deemed a material breach of this Lease by Lessor and Lessor shall have the responsibility to terminate said interference upon written notice from Lessee. Anything to the contrary in this Lease notwithstanding, the cure periods provided for in paragraph 8 hereof shall not be applicable to failure by Lessor to fulfill its obligations under this paragraph 6. If any such interference does not cease or is not rectified as soon as possible, but in no event longer than 5 business days after Lessee's written notice to Lessor, Lessor acknowledges that continuing interference will cause irreparable injury to Lessee, and Lessee shall have the right, in addition to any other rights that it may have at law or in equity, to bring action to enjoin such interference or to terminate this Lease immediately upon notice to Lessor.

7. Improvements; Utilities; Access.

(a) Lessee shall have the right, at Lessee's sole cost and expense, to erect and maintain on the Premises improvements, personal property and facilities, including without limitation, the Tower Facilities and other related facilities. The Tower Facilities shall remain the exclusive property of the Lessee throughout the term as well as upon the expiration or termination of this Lease. Lessee shall remove all of the Tower Facilities following the expiration or termination of this Lease for any reason. Lessor grants Lessee the right, subject to any applicable statute or ordinance, to clear all trees, undergrowth, or other obstructions and to trim, cut, and keep trimmed and cut all tree limbs which may interfere with or fall upon the Tower Facilities, the Premises or the *Access*. Lessor grants Lessee Access in, over, across and through the Property and other real property owned by Lessor as may be reasonably required for construction, installation, maintenance, and operation of the Tower Facilities, provided, however that such access shall be in a manner which Lessor has approved, must be consistent with the use of the Lessor's other property for park purposes and shall affect no more of Lessor's other property than is necessary and may also be subject to requirements of the Texas Parks and Wildlife Department or other state agency. Such approval not to be unreasonably withheld or delayed. Access to the Premises shall be designated by Lessor.

(b) Lessee shall have the right to install utilities, at Lessee's expense, and to improve present utilities on the Premises (including but not limited to the installation of emergency power generators). Lessee shall have the right to permanently place utilities on (or to bring utilities across or under) the Premises to service the Premises and the Tower Facilities. If utilities necessary to serve the equipment of Lessee or the equipment of Lessee's licensee(s) or sublessee(s) cannot be located within the Premises, Lessor agrees to cooperate with Lessee and to act reasonably in allowing the location of utilities on the Property or other real property owned by Lessor without requiring additional compensation from Lessee or Lessee's licensee(s) or sublessee(s). Lessor shall, upon Lessee's request, execute a separate recordable agreement or lease to the utility company providing such service evidencing this right.

(c) Lessee, Lessee's sublessee(s), licensee(s), assigns, invitees or agents shall enjoy at all times during this Lease ingress, egress, and access from the Premises 24 hours a day, 7 days a week, to an open and improved public road which shall be adequate to service the Premises and the Tower Facilities. If no such public road exists or ceases to exist in the future, Lessor will grant appropriate contractual rights to Lessee, Lessee's licensee(s), sublessee(s) and assigns so that Lessee may, at its own expense, construct a suitable private access drive to the Premises and the Tower Facilities, provided however, that the location and design of such a road shall be determined by Lessor in compliance with any restrictions of the Texas Department of Transportation. To the degree such access is across other property owned by

Lessor, Lessor grants access without requiring additional compensation from Lessee. Lessor shall, subject to the conditions in the next sentence, maintain access in a free and open condition so that no interference is caused to Lessee, Lessee's sublessee(s), licensee(s), assigns, invitees or agents by other lessees, licensees, invitees or agents of Lessor which may utilize the road. Lessor may install a lock on any common access gate so long as Lessee has the appropriate code or key to enter the Property and to gain access to the Premises. Lessee shall provide notice to Lessor [Attn: Director of Parks and Recreation] no later than the close of business of the next regular City of San Antonio business day of any access to the Property that occurs other than normal business hours for the City of San Antonio. During normal business hours Lessee shall notify Lessor [Attn: Director of Parks and Recreation] prior to or as soon as practical during any access to the Property if such access involves entry through the common access gate at any time when the gate is closed to the public. To the extent damage (including wear and tear caused by normal usage) to the road or any other route contemplated hereunder intended to provide Lessee with access to the Premises and the Tower Facilities is caused by Lessor or Lessor's lessees, licensees, invites or agents, Lessor shall repair same at its own expense. Nothing herein shall impair the Lessor from exercising its sovereignty and control over public roads nor shall it grant Lessee any special rights and privileges in any public property, other than the Premises.

8. Termination. This Lease may be terminated, without any penalty or further liability upon written notice as follows:

(a) By either party upon a default of any covenant or term hereof by the other party which default is not cured within 60 days of receipt of written notice of default (without, however, limiting any other rights available to the parties in law or equity); provided, that if the defaulting party commences efforts to cure the default within such period and diligently pursues such cure, the non-defaulting party shall no longer be entitled to declare a default;

(b) Upon 30 days' written notice by Lessee to Lessor if Lessee is unable to obtain, maintain, renew or reinstate through no fault of Lessee any agreement, permit or other Approvals necessary to the construction and operation of the Tower Facilities or to Lessee's Intended Use; or

(c) By Lessee for any reason or no reason whatsoever upon 30 days' written notice from Lessee to Lessor.

9. Licenses; Subleases. Lessee shall have the right, with prior written notice to Lessor, to license or sublease all or portion of the Premises, Access or the Tower Facilities to other parties. Lessee's licensee(s) and sublessee(s) shall, so long as Lessee and/or Lessee's licensee or sublessees are not in default hereunder and on the terms and conditions of this agreement, be entitled to modify the Tower Facilities and to erect additional improvements on the Premises including but not limited to antennas, dishes, cabling, additional storage buildings or equipment shelters as are reasonably required for the operation and maintenance of the communications equipment to be installed on the Premises by said licensee(s) and sublessee(s). So long as Lessee and Lessee's licensees or sublessees are not in default hereunder and on the terms and conditions of this agreement, Lessee's licensee(s) and sublessee(s) shall be entitled to all rights of ingress and egress to the Premises and the right to install utilities on the Premises as if said licensee(s) or sublessee(s) were Lessee under this Lease. Licensees and sublessees shall be required to obtain normal regulatory approvals such as, but not limited to, zoning and building permits, for any use they may make of the Premises. Nothing herein shall be construed as a waiver by the City of San Antonio of its governmental authority to review, issue or deny such approvals as provided by law.

10. Taxes. Lessee shall pay any personal property taxes assessed on or attributable to the Tower Facilities. Lessor shall pay, if Lessor's property interest are subject to such taxes, when due all real property taxes and all other fees and assessments attributable to the Property, Premises and Access.

Lessor is not hereby waiving the tax exempt status of any of its property. Lessee shall pay any increase in real property taxes levied against the Premises which is directly attributable to Lessee's use of the Premises (but not, however, taxes attributable to periods prior to the Commencement Date such as roll-back or greenbelt assessments) if Lessor furnishes reasonably adequate proof of such increase to Lessee. If Lessor fails to pay when due any taxes affecting the Property, Premises or the Access, Lessee shall have the right, but not the obligation, to pay such taxes and deduct the full amount of the taxes paid by Lessee on Lessor's behalf from future installments of Rent.

11. Damage or Destruction. If the Premises or the Tower Facilities are destroyed or damaged so as to hinder the Intended Use of the Tower Facilities in Lessee's sole judgment, Lessee may elect to terminate this Lease as of the date of the damage or destruction by written notice, no more than forty-five (45) days following date of such damage, to Lessor. In such event, all obligations of Lessee to Lessor shall cease to accrue as of the date of the damage or destruction and Lessee shall be entitled to the reimbursement of any Rent paid by Lessee applicable to the period subsequent to such damage or destruction. Nothing in this section shall relieve Lessee from its obligation to remove all of its equipment and improvements from the site.

12. Condemnation. If a condemning authority takes all of the Premises, or a portion sufficient in Lessee's sole judgment, to render the Premises unsuitable for Lessee's Intended Use in Lessee's reasonable discretion, this Lease shall terminate as of the date the title vests in the condemning authority. Lessor and Lessee shall share in the condemnation proceeds in proportion to the values of their respective interests in the Premises (which for Lessee shall include, where applicable, the value of the Tower Facilities, moving expenses, prepaid rent and business dislocation expenses). If a condemning authority takes less than all of the Premises such that the Premises remains suitable for Lessee's Intended Use, the Rent payable under this Lease shall be reduced automatically by such percentage as the area so condemned bears to the Premises as of the date the title vests in the condemning authority. A sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of eminent domain power shall be treated as a taking by condemnation for the purposes of this paragraph.

13. Insurance. Lessee, agrees to secure, at Lessee's sole cost and expense, prior to commencing any activities under this Lease Agreement, and to maintain, with respect to the leased Premises and on the Lessee Facilities, from the execution date of this Lease Agreement and for the duration of this Lease Agreement and any Renewal Terms, insurance, with companies admitted to do business in the State of Texas, such general liability, bodily injury and property damage policies which at a minimum provide a combined single limit of \$1,000,000 per occurrence. Said policy of general liability insurance shall insure, on an occurrence basis, against all liability of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Premises, all as provided herein. Lessee further agrees that with respect to the above required insurances, Lessor shall:

Be named as an additional insured on Lessee's General Liability coverage.

Be provided with a Waiver of Subrogation, but only as it pertains to Worker's Compensation and Employers' Liability.

Be provided with thirty (30) days advance notice, in writing, of cancellation of material change.

Be provided with Certificates of Insurance evidencing the above required insurance, prior to the commencement of this Lease and thereafter, with certificates evidencing renewals or replacements of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of such policy. Said notices and Certificates of Insurance shall be provided to:

- (i) City Clerk of the City of San Antonio, and
- (ii) City's Director of Risk Management, Office of Finance, and
- (iii) City's Director of Parks and Recreation

Lessee further agrees that with respect to the above required insurance, each insurance policy required by this Lease shall contain the following clauses:

"This insurance shall not be canceled, limited in scope or coverage, or non-renewed until after thirty (30) days' written notice has been given to:

- (iv) City Clerk, City of San Antonio
City Hall/Military Plaza
P.O. Box 839966/2nd Floor
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

- (v) City Clerk, City of San Antonio
City Hall/Military Plaza
P.O. Box 839966/2nd Floor
San Antonio, Texas 78283-3966
Attention: Director of Parks and Recreation

"It is agreed that the insurance provided by Lessee is primary to any insurance or self-insurance maintained by the City of San Antonio."

14. Environmental Compliance. Neither Lessor nor, to Lessor's knowledge, any third party has used, generated, stored or disposed of, or permitted the use, generation, storage or disposal of, any contaminants, oils, asbestos, PCB's, hazardous substances or wastes as defined by federal, state or local environmental laws, regulations or administrative orders or other materials the removal of which is required or the maintenance of which is prohibited, regulated or penalized by any federal, state or local government authority having jurisdiction over the Property ("**Hazardous Materials**") on, under, about or within the Property in violation of any applicable law or regulation. Lessor will not, and will not permit any third party to use, generate, store or dispose of any Hazardous Materials on, under, about or within the Property in violation of any applicable laws, regulations or administrative orders. Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Premises in violation of any applicable laws, regulations or administrative orders. This Lease shall at the option of Lessee terminate and be of no further force or effect if Hazardous Materials are discovered to exist on the Property through no fault of Lessee after Lessee takes possession of the Premises and Lessee shall be entitled to a refund of all the consideration paid in advance to Lessor under this Lease.

15. Indemnity. LESSEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the LESSOR and the elected officials, employees, officers, directors, volunteers and representatives of the LESSOR, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the LESSEE directly or indirectly arising out of, resulting from or related to LESSEE'S activities in, on or about the Leased Premises and the building in which said premises are located or in connection with

LESSEE'S use of the Leased Premises, or from any condition of the Leased Premises caused directly by LESSEE, including any acts or omissions of LESSEE, any agent, officer, director, representative, employee, consultant, contractor, sub-lessee or subcontractor of LESSEE, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence or intentional misconduct of LESSOR, its officers or employees, in instances where such negligence or intentional misconduct causes personal injury, death or property damage. IF THE LESSEE AND LESSOR ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE LESSOR UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF EITHER PARTY UNDER TEXAS LAW.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

LESSEE shall promptly advise the LESSOR in writing of any claim or demand against the LESSEE or LESSOR known to LESSEE related to or arising out of LESSEE'S activities under this Agreement. LESSOR shall promptly advise the LESSEE in writing of any claim or demand against the LESSEE or LESSOR known to LESSOR related to or arising out of LESSEE'S activities under this Agreement.

16. Notices. All notices or demands by or from Lessee to Lessor, or Lessor to Lessee, required under this Lease shall be in writing and shall be sent (United States mail postage pre-paid, certified with return receipt requested or by reputable national overnight carrier service for next business day delivery, transmit prepaid) to the other party at the addresses set forth in paragraphs 1(b) and 1(e) hereof, as applicable, or to such other addresses as the parties hereto may, from time to time, designate consistent with this paragraph 18, with such new notice address being effective 15 days after receipt by the other party. Notices will be deemed to have been given upon either receipt or rejection.

17. Title and Quiet Enjoyment. Lessor warrants and represents that (i) it has the full right, power, and authority to execute this Lease; (ii) it has good and marketable fee simple title to the Premises, the Access and any other real property across which Lessor may grant Lessee, its sublessees and/or licensees an Access, free and clear of any liens and encumbrances or mortgages; and (iii) the Premises constitutes a legal lot or may otherwise be leased without the need for any subdivision or platting approval. Lessor covenants that Lessee shall have the quiet enjoyment of the Premises during the term of this Lease.

18. Assignment. Exclusive of Lessee's right to license or sublease all or a portion of the Premises in paragraph 9 above, Lessee may otherwise assign this Lease with prior notice to and the consent of Lessor's governing body, which shall not be unreasonably withheld or delayed. Additionally, Lessee may mortgage or grant a security interest in this Lease and the Tower Facilities, and may assign this Lease and the Tower Facilities to any such mortgagees or holders of security interests including their successors and assigns (hereinafter collectively referred to as "**Secured Parties**"). If requested by Lessee, Lessor shall execute such consent to such financing as may reasonably be required by Secured Parties. In addition, if requested by Lessee, Lessor agrees to notify Lessee and Lessee's Secured Parties simultaneously of any default by Lessee and to give Secured Parties the same right to cure any default as Lessee. If a termination, disaffirmance or rejection of the Lease by Lessee pursuant to any laws (including any bankruptcy or insolvency laws) shall occur, or if Lessor shall terminate this Lease for any reason, Lessor will give to Secured Parties prompt notice thereof and Secured Parties shall have the right to enter upon

the Premises during a 30-day period commencing upon Secured Parties' receipt of such notice for the purpose of removing any Tower Facilities

19. Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors, personal representatives and assigns.

20. Waiver of Lessor's Lien. Lessor hereby waives any and all lien rights it may have, statutory or otherwise, in and to the Tower Facilities or any portion thereof, regardless of whether or not same is deemed real or personal property under applicable laws.

21. Liens on Lessor's Property. In no event shall any lien attach to the property of Lessor arising out of the use of the premises by Lessee's or of the use of the premises by any other party acting on behalf of or through Lessee. Lessee shall take any and all necessary steps to secure the removal of any lien filed in violation of this provision or in violation of Texas law within thirty (30) days after receiving notice of such unauthorized lien. Lessee may however exercise any rights available at law to contest the validity of such lien providing that Lessee provides a bond issued by a bonding company authorized to issue bonds in the state of Texas or other substitute security approved by Lessor in an amount sufficient to secure the payment of the amount claimed in such lien in the event that Lessee's efforts to contest the lien are not successful. Lessee shall diligently pursue the actions necessary to remove the unauthorized liens.

22. Miscellaneous.

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

(b) Each party agrees to furnish to the other, within 30 days after request, such estoppel information as the other may reasonably request.

(c) This Lease constitutes the entire agreement and understanding of Lessor and Lessee with respect to the subject matter of this Lease, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to said Lease must be in writing and executed and delivered by Lessor and Lessee.

(d) If either Lessor or Lessee is represented by a real estate broker in this transaction, that party shall be fully responsible for any fees due such broker and shall hold the other party harmless from any claims for commission by such broker.

(e) Lessor agrees to cooperate with Lessee in executing any documents necessary to protect Lessee's rights under this Lease or Lessee's use of the Premises, including but not limited to affidavits relating to title curative measures and non disturbance agreements, and to take any further action which Lessee may reasonably require to effect the intent of this Lease.

(f) This Lease shall be construed in accordance with the laws of the State of Texas. Lessor's grants of rights hereunder is expressly conditioned upon the fact that Lessor is a Texas home-rule municipality and, as such, it is subject to provisions and limitations of the Constitution and laws of the State of Texas, the Charter of the City of San Antonio and its Ordinances. Nothing in this agreement is a waiver of the Lessor's governmental powers or functions. The Lessee agrees the terms and conditions of this agreement, any representations or warranties and Lessor's duties under this agreement are subject to the limitations in the Constitution, statutes, Charter and ordinances. Nothing herein obligates the Lessor's governing body or any of Lessor's boards, commissions or officials to render any particular decision in the exercise of any governmental function.

(g) If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

(h) Upon request by Lessee, Lessor shall execute and deliver to Lessee a Memorandum of Lease, which Lessee may file of record in the property records in the county in which the Property, Premises and Access are located. The Memorandum of Lease shall set forth the names and addresses of Lessor and Lessee, the legal description of the Property and the Premises, the duration of the Initial Term and the quantity and duration of the Renewal Terms. If the information included in the Memorandum of Lease should change or if it becomes clear that such information is incorrect or incomplete or if the Lease is amended, Lessor agrees to execute and return to Lessee a recordable Amended Memorandum of Lease in form supplied by Lessee.

(i) Lessee may obtain title insurance on its interest in the Premises and Access, and Lessor shall cooperate by executing any documentation required by the title insurance company.

(j) This Lease may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

(k) Failure or delay on the part of either party to exercise any right, power or privilege hereunder will not operate as a waiver thereof and waiver of breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach.

(l) Each party executing this Lease acknowledges that it has full power and authority to do so and that the person executing on its behalf has the authority to bind the party.

(m) This Lease shall become valid and binding only upon Lessee's execution by its duly authorized representative.

(n) The Parties agree that a scanned or electronically reproduced copy or image of this Lease reflecting full execution by the Parties shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Lease notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Lease and without the requirement that the unavailability of such original, executed counterpart of this Lease first be proven.

22. Recordation. Neither party will record this Lease in the County Clerk's Office for Bexar County, Texas. However, the parties acknowledge that the Lease, the ordinance approving the Lease and various supporting materials will be on file in the Office of the City Clerk, City of San Antonio, Texas.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Lessor and Lessee have each executed this Lease as of the respective dates written below.

LESSOR: CITY OF SAN ANTONIO, a Texas Municipal Corporation.

By: _____

Name: _____

Title: _____ President

Date: _____

[PARTNERSHIP, LLC, LLP]

_____, a _____

By: _____

Name: _____

Title: _____

Date: _____

[INDIVIDUAL(S)]

Print Name: _____

Date: _____

Print Name: _____

Date: _____

Acknowledgements

Please use the proper acknowledgement forms for the state in which the Premises is located. The following are examples only.

NOTARY ACKNOWLEDGMENT FOR CORPORATION:

STATE OF _____

COUNTY OF _____

Before me, _____ the undersigned, a Notary Public for the State, personally appeared _____, who is the _____ of _____, a _____ corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official stamp or seal, this _____ day of _____, _____.

Notary Public

[AFFIX NOTARY SEAL]

My commission expires: _____

NOTARY ACKNOWLEDGMENT FOR PARTNERSHIP, LLC OR LLP:

STATE OF _____

COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____, who is the general partner/manager/member of _____, a _____, came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, _____.

Notary Public

[AFFIX NOTARY SEAL]

My commission expires: _____

NOTARY ACKNOWLEDGMENT FOR INDIVIDUALS:

STATE OF _____
COUNTY OF _____

I, a Notary Public of the County and State aforesaid, certify that _____ came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this _____ day of _____, _____.

Notary Public

[AFFIX NOTARY SEAL]

My commission expires: _____

LESSEE:

By: _____
Title: _____ President
Date: _____

STATE OF _____

COUNTY OF _____

Before me, _____ the undersigned, a Notary Public for the State, personally appeared _____, who is the _____ President of _____, a _____ corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal, this _____ day of _____, _____.

Notary Public

[AFFIX NOTARY SEAL]

My commission expires: _____

The following exhibits are attached hereto and incorporated herein:

- | | |
|-----------|--|
| Exhibit A | Description or Depiction of Property |
| Exhibit B | Description or Depiction of Premises |
| Exhibit C | Description of Access and Utility Access |

EXHIBIT "A"

DESCRIPTION OR DEPICTION OF PROPERTY

The Property is described and/or depicted as follows:

EXHIBIT "B"

DESCRIPTION OR DEPICTION OF PREMISES

The Premises is described and/or depicted as follows:

EXHIBIT "C"

DESCRIPTION OR DEPICTION OF ACCESS AND UTILITY ACCESS

The Access is described and/or depicted as follows:

CITY OF SAN ANTONIO
City Manager's Office
Interdepartmental Correspondence

To: Mayor & City Council

Through: Terry M. Brechtel, City Manager

From: Malcolm Matthews, Director of Parks & Recreation

Copies: Andy Martin, City Attorney; Christopher J. Brady, Assistant City Manager; file

Subject: Cellular Tower Lease Agreement

DATE: November 13, 2003

Summary and Recommendation:

An Ordinance authorizing a 25 year ground lease agreement between the City of San Antonio and SpectraSite Communications, Inc. for the purpose of relocating, constructing, maintaining, securing and operating a communications facility at Medina River Park for an initial annual amount of \$7,300, subject to annual adjustment, plus the additional consideration of relocating SpectraSite's existing facilities in support of the City's obligations under the Project Starbright Agreement.

Staff recommends approval.

Background Information:

Starbright Industrial Development Corporation purchased approximately 1,700 acres in May 2003 for the Toyota Project Site. Mary Louise Walsh previously owned this property. There is a communications tower (the "Cell Tower") located near Applewhite Road on the Toyota site that was constructed pursuant to a Communications Site Lease Agreement dated December 23, 1997 between Nextel of Texas, Inc. and Mary Louise Walsh. As part of the Starbright Agreement, the City and Starbright IDC are obligated to move the cell tower from the Toyota site. In order to expedite relocation of the cell tower, the City will assume the existing cell tower agreement and locate the tower on city-owned property.

The existing lease provides a location of 10,000 square feet, no tower height restriction, and no limit to the number of providers that the cell tower can accommodate, and a provision for unlimited access to the cell tower. In addition, there are five remaining five-year renewal terms under the original agreement.

Medina River Park was identified as a possible location for the relocation of the cell tower in July 2003. Parks and Recreation staff met with representatives from SpectraSite at the Medina River Park to determine if the site would be suitable for the relocation of the tower. A site has been located that will not negatively impact future development of the 362 acre park in accordance with the recently completed Medina River Park Master Plan. Other parks such as Monterrey Park and O.P. Schnabel have cell towers located within the park.

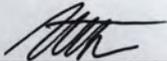
The City and SpectraSite have agreed to relocate the cell tower to Medina River Park. Estimated cost for relocation of the cell tower is \$300,000. In exchange, SpectraSite has committed to vacate the existing location in sufficient time for the City and Starbright IDC to meet the deadlines set forth in the Project Starbright Agreement.

Financial Impact:

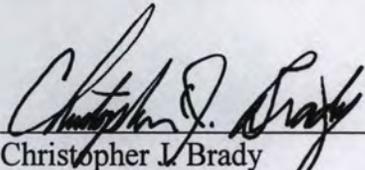
The Starbright Agreement provides for a credit to the City's \$10,000,000 site preparation reimbursement obligation in the amount of \$300,000 for relocating the cell tower. Relocation costs will be paid from the City of San Antonio, Texas Starbright Industrial Development Corporation Contract Revenue Bonds, Series 2003 bond proceeds. Monthly rental proceeds for the cell tower will be dedicated to the Medina River Park for park improvements. There is no impact to the City's operating budget.

Coordination:

This ordinance has been coordinated with the City Attorney's Office, Parks & Recreation Department, Asset Management and Finance Department.

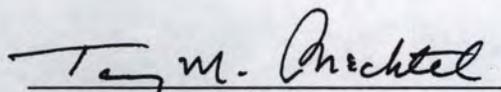


Malcolm Matthews
Director of Parks & Recreation



Christopher J. Brady
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager