# CITY OF EL PASO, TEXAS
# AGENDA ITEM
# DEPARTMENT HEAD'S SUMMARY FORM

CITY CLERK DEPT.
2013 MAR 14 PM 1:11

**DEPARTMENT:** DEPARTMENT OF INFORMATION TECHNOLOGY

**INTRODUCTION AGENDA DATE:** MARCH 19, 2013
**PUBLIC HEARING AGENDA DATE:** APRIL 2, 2013

**CONTACT PERSON/PHONE:** MIGUEL GAMINO, DEPARTMENT OF INFORMATION TECHNOLOGY DIRECTOR, 541-4746

SOL CORTEZ, LEGAL DEPARTMENT
ASSISTANT CITY ATTORNEY, 541-4550

**DISTRICT (S) AFFECTED:** ALL

**SUBJECT:**
An ordinance to granting the first amendment to lease to the University of Texas at El Paso (UTEP) regarding the relocation a portion of the City's existing underground conduit system in downtown and south El Paso for their internal fiber optic telecommunications system and related interlocal services for installation of the fiber. As consideration, the lessee shall pay certain relocation costs and the annual lease fee of $2,764.54 shall remain the same and paid to the City.

**BACKGROUND / DISCUSSION:**
The City and UTEP are governmental entities as defined in Texas Government Code, Chapter 791 and have the authority to enter into this agreement order to become more efficient and effective in each party's respective governmental duties and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law.

City is the owner of a certain integrated conduit system located under the surface of the ground and within public rights-of-way of the City (Conduit). UTEP desires to lease a single duct in certain City underground conduit within public rights-of way for the purpose of installing a fiber optic cable for UTEP's internal telecommunications systems. UTEP also desires and the City is willing, through its subcontractor, install the fiber optic cable within the Conduit at their sole cost and expense.

**PRIOR COUNCIL ACTION:**
December 4, 2012, City Council approved an Ordinance granting a lease to UTEP ) of a single duct in a portion of the City's existing underground conduit system for their fiber optic telecommunications system and related interlocal services for installation of the fiber

**AMOUNT AND SOURCE OF FUNDING:**
N/A

**BOARD / COMMISSION ACTION:**

N/A

**********REQUIRED AUTHORIZATION**********

**DEPARTMENT HEAD:** **Miguel Gamino, IT Director**

Name Signature Date

**AN ORDINANCE GRANTING A FIRST AMENDMENT TO LEASE TO THE UNIVERSITY OF TEXAS AT EL PASO REGARDING THE RELOCATION A PORTION OF THE CITY'S EXISTING UNDERGROUND CONDUIT SYSTEM IN DOWNTOWN AND SOUTH EL PASO FOR THEIR INTERNAL FIBER OPTIC TELECOMMUNICATIONS SYSTEM AND RELATED INTERLOCAL SERVICES FOR INSTALLATION OF THE FIBER. AS CONSIDERATION, THE LESSEE SHALL PAY CERTAIN RELOCATION COSTS AND THE ANNUAL LEASE FEE ($2,764.54) SHALL REMAIN THE SAME.**

**WHEREAS**, the CITY OF EL PASO, Texas, a municipal corporation (hereinafter referred to as "City" or "Lessor"), and THE UNIVERSITY OF TEXAS AT EL PASO, a public institution of higher learning for the State of Texas (hereinafter referred to as "UTEP" or "Lessee") entered into a Lease Agreement on November 27, 2012 ("Lease Agreement") for Lessee's use of that certain City-owned conduit along a designated Route ("Conduit") in which the City installed fiber belonging to UTEP (the "UTEP Fiber") in connection with its fiber optic telecommunications network; and

**WHEREAS**, the Lease provides in Section 8 that City may relocate the Conduit leased to Lessee; and

**WHEREAS**, the City is implementing a plan to build a ballpark facility that requires the relocation of a portion of the Conduit and desires to provide an alternate route for Lessee's fiber in City-owned Conduit; and

**WHEREAS,** the City and Lessee desire to amend the Lease Agreement to provide an alternate route for Lessee's fiber on the designated Conduit Route leased to Lessee.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to execute a First Amendment to Lease Agreement, on behalf of the City upon the following terms, to UTEP, hereinafter referred to as "Lessee":

1. The First Amendment to Lease Agreement shall be in a form that is attached and incorporated as Exhibit "A"; and,

2. The First Amendment to Lease Agreement is to provide an alternate route along the designated Route permit Lessee to continue its use of the City-owned conduit solely for the installation and maintenance of the Fiber, as set forth in the Lease Agreement; and,

3. As consideration for this Lease Amendment, Lessee shall pay the City $30,592.65 for the purchase and installation of the UTEP fiber and $11,242.29 for the purchase and installation of the three-cell cloth innerduct necessary for the alternate Route. The Lessee shall also reimburse the City $6,750 ~~$6,700~~ for the purchase of the three-cell cloth innerduct of the City's portion in exchange for 225 of the City's Avaya VoIP phones. The rent shall remain the same as in the original Lease, subject to the terms and conditions of this ordinance and the Lease Agreement; and

4. Except as set forth in the First Amendment to Lease Agreement, the terms and conditions of the Lease Agreement shall continue in full force and effect. .

**PASSED AND APPROVED** this ____ day of _____, 2013.

**THE CITY OF EL PASO**

**ATTEST:**

_____
John F. Cook
Mayor

_____
Richarda Momsen
City Clerk

**APPROVED AS TO FORM:**

Sol M. Cortez
Assistant City Attorney

**APPROVED AS TO CONTENT:**

Miguel Gamino, Jr., CPA, Director
Information Technology Department

THE STATE OF TEXAS )
)
)
COUNTY OF EL PASO )

**EXHIBIT "A"**
**FIRST AMENDMENT TO INTERLOCAL AGREEMENT AND CONDUIT DUCT LEASE**

**THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT AND CONDUIT DUCT LEASE** ("Agreement") is made and entered into this ____ day of _____ 2013, by and between the CITY OF EL PASO, Texas, a municipal corporation (hereinafter referred to as "City" or "Lessor"), and THE UNIVERSITY OF TEXAS AT EL PASO, a public institution of higher learning for the State of Texas (hereinafter referred to as "UTEP" or "Lessee").

**WITNESSETH**

**WHEREAS,** the City and UTEP are governmental entities as defined in Texas Government Code, Chapter 791 and have the authority to enter into this agreement order to become more efficient and effective in each party's respective governmental duties, and have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law; and

**WHEREAS**, City is the owner of a certain conduit system, including ducts, conduits, manholes and handholes, and appurtenant facilities joint to form an integrated whole located under the surface of the ground and within public rights-of-way of the City ("Conduit"); and

**WHEREAS**, on or about November 27, 2012, City and UTEP entered into Interlocal Agreement and Conduit Lease, ("Lease Agreement"), for Lessee's use of that certain City-owned conduit along a designated Route ("Conduit") in which City installed fiber belonging to UTEP (the "UTEP Fiber") in connection with its fiber optic telecommunications network; and

**WHEREAS**, the Lease provides in Section 8 that City may relocate the Conduit or Leased Duct containing the UTEP Fiber leased to Lessee; and

**WHEREAS**, the City is implementing a plan to build a ballpark facility that requires the relocation of the Conduit Route and desires to provide an alternate route for Lessee's fiber within City-owned Conduit; and

**WHEREAS,** the City and Lessee desire to amend the Lease to provide an alternate route on the Conduit Route leased to Lessee.

**NOW THEREFORE,** in consideration of these premises and mutual covenants and agreements of the parties, it is agreed as follows:

1. Section 1, Scope and Purpose, is hereby revised to amend the second sentence to read as follows:

   Such secondary high-speed circuit will be done via a 144-strand single mode fiber optic cable to be owned by UTEP ("UTEP Fiber") installed in one of the inner ducts within the City's Conduit along the designated fiber route.

2. Section 2, Conduit Duct Lease, is hereby revised to delete the second paragraph in its entirety and substitute paragraph is added as follows:

**Route No.1** Relabeled as Route No.1 by this Amendment, this route from the original lease remains unchanged. The City has installed a 48 strand single mode UTEP Fiber in one of the inner ducts within the City's Conduit along the fiber route as established in the original Lease. Commencing at the UTEP campus at the corner of Glory Road and Oregon Street: Thence South to the southeast corner of Yandell Avenue and Oregon Street. The route will then follow an easterly direction to the southwest corner alley between Mesa Street and Stanton Street. The route will then follow a southerly direction on alley to the existing conduit overpass (situated half way between Mesa and Stanton streets) across Interstate 10 to Wyoming Avenue. The route will then follow a westerly direction on Missouri Avenue to the northwest corner of Missouri Avenue and Mesa Street. The route will then follow easterly to the southwest corner of Stanton Street and Missouri Avenue. The route will continue southerly to the northwest corner of Stanton Street and Franklin Avenue. The route then will continue westerly direction to the northeast corner of Santa Fe Street and Franklin Avenue. The route will continue to the southwest corner of Santa Fe Avenue and Franklin Avenue. The route will continue to a ground box located at the southeast El Paso City Hall corner building located at the east parking lot of Civic Plaza 2 (El Paso City Hall). Estimated distance of Fiber Project Path is 3.08 miles or approximately 16,262 linear feet.

**Route No. 2.** City will install a 144-strand within a single innerduct in the four-inch City Owned Conduit: Commencing at the intersection of Franklin Avenue and Stanton Street: Thence North along Stanton Street for one block until arriving at the intersection of Stanton Street and Missouri Avenue, then turning eastward for two blocks until arriving at the intersection of Missouri Avenue and Campbell Street , then turning southward on Campbell Street for six blocks until arriving at the intersection of Campbell Street and San Antonio Avenue, then turning westward on San Antonio Avenue for five blocks until arriving at the intersection of San Antonio Avenue and El Paso Street, then turning southward for one block until arriving at the intersection of El Paso Street and San Antonio Avenue, then turning westward on San Antonio Avenue for four blocks until arriving at the intersection of San Antonio Avenue and Durango Street, then turning southward for one block until arriving at the intersection of Durango Street and Overland Avenue for a total of 6,813.5163 of lineal feet.

In order to install such fiber, the parties agree that City will install a three-cell cloth innerduct (of the type jointly approved by the City's IT Director and Lessee) within Route No.2. One (1) cell of the three-cell cloth innerduct will belong to Lesee and two (2) cells of the three-cell cloth innerduct will belong to the City.

A map of Route No.2 is attached hereto and made a part hereof as exhibit "C".

3. Section 6, Consideration, is revised to add the following language at the end of the section:

   The parties acknowledge that in consideration of the parties' mutual cooperation to relocate the Conduit Route for Lessee, the parties will agree to the following consideration:

   A. The City will purchase and install the fiber optic cable and three-cell cloth necessary for the alternate Route.
   B. Lessee shall reimburse the City $6,750.00 for the purchase of the three-cell cloth innerduct of the City's portion. The City in return, will provide the Lessee with two hundred twenty-five (225) Avaya VoIP phones.
   C. Lessee will pay the City $30,592.65 for the City to purchase and install the fiber and $11,242.29 for the City to purchase and install the innerduct along the alternate Route.
   D. The annual and monthly fee shall remain the same as the amounts set forth in the original Lease.

4. Section 12, Notice, shall be amended to revise the City's address as follows:

   City of El Paso
   ATTN: City Manager
   P.O. Box 1890
   El Paso, Texas 79950-1890

   with copies to:

   City of El Paso
   ATTN: Director of Information Technology
   P.O. Box 1890
   El Paso, Texas 7995-1890

   City of El Paso
   ATTN: Director of City Development Department
   P.O. Box 1890
   El Paso, Texas 79950-1890

5. Except as set forth in this Amendment, the terms and conditions of the Lease Agreement shall continue in full force and effect.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.

***[Signatures continue on following page]***

THE STATE OF TEXAS )
) **FIRST AMENDMENT TO LEASE AGREEMENT**
COUNTY OF EL PASO )

**THE CITY OF EL PASO**

_____
Joyce Wilson
City Manager

**APPROVED AS TO FORM:**

Sol M. Cortez
Assistant City Attorney

**APPROVED AS TO CONTENT:**

Miguel Gamino, Director
Information Technology Department

**ACKNOWLEDGEMENT**

**THE STATE OF TEXAS )**
**COUNTY OF EL PASO )**

This instrument is acknowledged before me on this ____ day of _____, 2013, by Joyce Wilson as City Manager on behalf of the **CITY OF EL PASO.**

_____
Notary Public, State of Texas

My Commission Expires:

***[Signatures continue on following page]***

## ACCEPTANCE

The attached Lease, with all conditions thereof, is hereby accepted this ____ day of _____, 2013.

**THE UNIVERSITY OF TEXAS AT EL PASO**

**By:** _____ 3/15/13
Cynthia Vizcaino Villa
Vice President for Business Affairs

## ACKNOWLEDGEMENT

**THE STATE OF TEXAS )**

**COUNTY OF EL PASO )**

This instrument is acknowledged before me on this 15 day of March, 2013, by Cynthia Vizcaino Villa as Vice President on behalf of **THE UNIVERSITY OF TEXAS AT EL PASO**, a public institution of higher education for the State of Texas, as Lessee

_____
Notary Public, State of Texas

My Commission Expires: NORMA ALICIA NAVEDO MY COMMISSION EXPIRES July 18, 2014

**EXHIBIT "C"**

FLORENCE
OCHOA
MILLS
MYRTLE
MAGOFFIN
CAMPBELL
OVERLAND
FIRST
ALLEY H
PAISANO
KANSAS
STANTON
FRANKLIN
CAMPBELL
MAIN
TEXAS
MESA
KANSAS
SAN ANTONIO
OREGON
STANTON
MISSOURI
MESA
EL PASO
MILLS
OVERLAND
OREGON
SHELDON
MESA
MAIN
FRANKLIN
YANDELL
SANTA FE
CHIHUAHUA
I-10
WYOMING
CIVIC CENTER
SAN ANTONIO
OREGON
LEON
EL PASO
PROSPECT
MISSOURI
DURANGO
SANTA FE
RAMP
EXIT 19
SAN FRANCISCO
WESTERN
ANTHONY
PAISANO