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

DEPARTMENT: DEPARTMENT OF INFORMATION TECHNOLOGY

INTRODUCTION AGENDA DATE: MARCH 26, 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:
This is an ordinance granting a first amendment to the Transtelco Inc. lease. The amendment relates to the relocation of a portion of the City's existing underground conduit system in downtown and south El Paso for a fiber optic cable telecommunications system. As consideration the lessee shall pay certain relocation costs and the annual lease fee of $12,524.70 shall remain the same.

BACKGROUND / DISCUSSION:
Transtelco, Inc. is a Certificated Telecommunications Utility and issued a Service Provider Certificate of Operating Authority under the Public Utility Regulatory Act of Texas. Transtelco desires the use of certain City of El Paso underground conduit within public rights-of–way for the purpose of installing a fiber optic cable communication network to transport electronic information.

On December 20, 2011, Council authorized the City Manager to execute a lease agreement on behalf of the city to Transtelco for a portion of the City's existing underground conduit system in downtown and south El Paso for a fiber optic cable telecommunications system.

PRIOR COUNCIL ACTION:
December 20, 2011

AMOUNT AND SOURCE OF FUNDING:
N/A

BOARD / COMMISSION ACTION:

N/A

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

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

Name Signature Date

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AN ORDINANCE GRANTING A FIRST AMENDMENT TO LEASE TO TRANSTELCO, INC. REGARDING THE RELOCATION OF A PORTION OF THE CITY'S EXISTING UNDERGROUND CONDUIT SYSTEM IN DOWNTOWN AND SOUTH EL PASO FOR A FIBER OPTIC CABLE TELECOMMUNICATIONS SYSTEM. AS CONSIDERATION, THE LESSEE SHALL PAY CERTAIN RELOCATION COSTS AND THE ANNUAL LEASE FEE ($12,524.70) SHALL REMAIN THE SAME.

WHEREAS, TRANSTELCO, INC. (hereinafter called "Lessee") is a Certificated Telecommunications Utility (CTU) that has been issued a Service Provider Certificate of Operating Authority (SPCOA) under the Public Utility Regulatory Act of Texas, and City of El Paso (hereinafter called "City") entered into a Lease Agreement on December 20, 2011 ("Lease Agreement") for Lessee's use of that certain underground conduit within public rights-of-way in the City of El Paso (the "Conduit") for the purpose of installing a fiber optic cable communication network of Lessee solely to transport electronic information; and,

WHEREAS, the Lease provides in Section 6 that City may relocate the Conduit leased to Lessee and require Lessee to remove, alter, adapt or conform Lessee's fiber because of such changes in the Conduit.

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 substitute a portion of 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 TRANSTELCO, INC., 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 delete a portion of the originally leased Conduit along the designated Route and substitute certain Conduit on an alternate route to 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 for installation of its fiber in the alternate route and installation of a three-cell innerduct in a portion of the City's Conduit and 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

_____
John F. Cook
Mayor

ATTEST:

_____
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

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

THIS FIRST AMENDMENT TO LEASE AGREEMENT ("Amendment") is made and entered into this ____ day of _____ 2013, by and between the CITY OF EL PASO, Texas, a municipal corporation in the County of El Paso in the State of Texas (hereinafter referred to as "City"), and TRANSTELCO, INC. (hereinafter referred to as "Lessee"), a Certificated Telecommunications Utility (CTU) that has been issued Service Provider Certificate of Operating Authority (SPCOA) under the Public Utility Regulatory Act of Texas.

WITNESSETH

WHEREAS, City and Lessee entered into a Lease Agreement on December 20, 2011 ("Lease Agreement"), for Lessee's use of that certain City-owned conduit along a designated Route ("Conduit") in which Lessee installed certain fiber belonging to Lessee (the "Fiber") in connection with a fiber optic telecommunications network; and,

WHEREAS, the Lease provides in Section 6 that City may relocate the Conduit leased to Lessee and require Lessee to remove, alter, adapt or conform Lessee's fiber because of such changes in the location of the Conduit.

WHEREAS, the City is implementing a plan to build a ballpark facility that requires the relocation of a portion 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 Agreement to substitute a portion of the Conduit Route leased to Lessee.

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

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

> The City hereby grants to Lessee, a non-exclusive leasehold interest (hereinafter referred to the "Lease") to install, operate, repair, replace and maintain within a single innerduct within the Conduit located under the surface of the ground and within public rights-of-way of the City (hereinafter collectively referred to as the "City Property") certain fiber belonging to Lessee (the "Fiber") in connection with a fiber optic telecommunications network providing fiber optic telecommunications service to its customers.

2. Section 2, Location of Conduit, is hereby deleted in its entirety and substitute section is added as follows:

SECTION 2. LOCATION OF CONDUIT.

The Conduit leased to Lessee is located along separate routes in downtown El Paso specifically described as follows:

Route No.1. Route No.1 is deleted in its entirety and amended as follows:

Route No. 1A. Lessee has installed a 288 strand Fiber Optic Cable within a single duct in City-owned four inch Conduit along this route. 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 westward for four blocks until arriving at the intersection of Missouri Avenue and Santa Fe Street, for a total of 1,663 of lineal feet.

The map of route is attached hereto and made a part of hereof as Exhibit "1A".

Route No.1B. Lessee has installed a 288 strand Fiber Optic Cable within a single duct in City-owned four inch Conduit along this route. Commencing at the intersection of Franklin Avenue and Durango Street: Thence south along Durango Street for four blocks until arriving at the intersection of Durango Street and Overland Avenue for a total of 1,069 lineal feet.

The map of route is attached hereto and made a part of hereof as Exhibit "1B".

The portion of the Conduit from the original Route No.1 which Lessee will cease to occupy ("Deleted Conduit Route") shall commence at the intersection of Franklin Avenue and Stanton Street: Thence east until arriving at the intersection of Missouri Avenue and Durango Street, then turning southward on Durango Street for 732.34 L.F.,,arriving at the interaction of Franklin Avenue and Durango Street.

Route No. 2. Route No. 2 remains unchanged from the original Lease. Lessee has installed a 288 strand Fiber Optic Cable within a single duct in City-owned four inch Conduit along this route. Commencing at the intersection of Main Street and Mesa Street: Thence East along Main Street for three blocks until arriving at the intersection of Main Street and Campbell Street, then turning southward on Campbell Street for four blocks until arriving at the intersection of Campbell Street and San Antonio Avenue, then turning westward on San Antonio Avenue for two blocks until arriving at the intersection of San Antonio Avenue and Stanton Street, then turning southward on Stanton Street for ten blocks until arriving at the Stanton Street Bridge for a total of 6,820.85 of lineal feet.

The map of the route is attached hereto and made a part hereof as Exhibit "2".

Route No.3A. Lessee will install a 288 Fiber Optic cable within a single innerduct in the four-inch City Owned Conduit: Commencing at the intersection of Franklin Avenue and Stanton Street: Thence west along Franklin Avenue for two blocks until arriving at the intersection of Franklin Avenue and Campbell Street, then turning

southward for three blocks until arriving at the intersection of Campbell Street and Mills Avenue, then turning westward on Mills Avenue for two blocks until arriving at the intersection of Mills Avenue and Stanton Street, then turning southward on Stanton Street for two blocks to arrive at the intersection of Stanton Street and San Antonio Avenue , then turning westward on San Antonio Avenue for three 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 5,645 of lineal feet

In order to install such fiber, the parties agree that Lessee will install a three-cell cloth innerduct (of the type jointly approved by the City's IT Director and Lessee) within a portion of this Route No. 3A commencing at the intersection of Franklin Avenue and Stanton Street and ending at the intersection of Stanton Street and San Antonio Avenue. The parties acknowledge that the City has installed a three-cell innerduct along the remaining portion of this Route No. 3A.

The map of the route is attached hereto and made a part hereof as Exhibit "3A".

Route No. 3B. Lessee will install a 36 strand Fiber Optic Cable within a single duct in City-owned three inch and two inch Conduit along this route. Commencing at the Southwest Corner of Campbell Street and Mills Street: Thence east along Mills Street approximately 75' and then north 75' for a total of 150 lineal feet.

A map of the route is attached hereto and made a part hereof as Exhibit "3B".

Route No. 3C. Lessee will install up to a 144 strand Fiber Optic Cable within a single duct in City-owned four inch Conduit along this route. Commencing at the intersection of Mills Avenue and Stanton Street: Thence west along Mills Avenue for Three blocks until arriving at the intersection of Mills Avenue and El Paso Street, then turning southward for one block until arriving at the intersection of El Paso Street and San Antonio Avenue for a total of 1,305 of lineal feet.

In order to install such fiber, the parties agree that Lessee at its sole costs will install a three-cell cloth innerduct (of the type jointly approved by the City's IT Director and Lessee) within this Route No. 3C. 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 the route is attached hereto and made a part hereof as Exhibit "3C".

Route No. 1A, Route No. 1B, Route No. 2, and Routes No. 3A, Route No. 3B, Route No. 3C are hereinafter sometimes collectively referred to as the "Route". A map of the Route is attached hereto and made a part hereof as Exhibit "1".

3. Section 4, 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, Lessee will install the fiber along the alternate Route and will install the innerduct along a portion of Route 1A, 1B, 3A, 3B, 3C, the annual and monthly fee shall remain the same as the amounts set forth in the original Lease.

4. Section 10, 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. Mutual Release. That any rights the Lessee had to use and occupy any portion of the Conduit in Route No. 1 ("Deleted Conduit Route"), including any lease, license or month to month tenancy recognized by applicable state law, is hereby mutually terminated. This action is to the mutual benefit of the City and Lessee, and the parties agree and hereby do waive any notice for termination that may be required by law or Lease Agreement.

The parties agree that Lessee shall have 15 days to remove the fiber or related fixtures, equipment or other property belonging to Lessee in the Deleted Conduit Route. **The parties agree that following such 15 day period any fiber or related fixtures, equipment or other property that Lessee may have left in the Deleted Conduit Route are hereby deemed abandoned and declared to be the sole property of the City, and Lessee hereby forever releases any and all claims, the same, of whatsoever nature or kind regarding the fiber, or related fixtures, equipment, or other property in the Deleted Conduit Route.** It is the intention of the parties that the termination of the use, occupancy, license or tenancy of the Deleted Conduit Route is to be without any additional costs, obligation or liability on the part of either party, except as herein described in this Amendment.

The City and the Lessee do hereby forever release and discharge each other from any and all obligations, claims, causes of actions, damages, losses, liabilities, costs and expenses, including without limitation, reasonable attorneys' fees whether known or unknown,

directly or indirectly related to the Lessee's use, occupancy, tenancy, license, lease, or any rights in, to or of the Deleted Conduit Route.

6. 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)
)
COUNTY OF EL PASO)

FIRST AMENDMENT TO LEASE AGREEMENT

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]

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ACCEPTANCE

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

LESSEE: TRANSTELCO, INC.

By: _____
Miguel Fernandez, President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)

COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____ day of _____, 2013, by _____ as _____ on behalf of **TRANSTELCO, INC.**, as Lessee.

_____
Notary Public, State of Texas

My Commission Expires:

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EXHIBIT "1"

ROUTE

EXHIBIT "1A"

Exhibit 1A
YANDELL
OREGON
I-10
MESA
WYOMING
WYOMING
MISSOURI
EL PASO
MESA
OREGON
MISSOURI
PROSPECT
FRANKLIN
SANTA FE
EL PASO

EXHIBIT "1B"

COLDWELL
FRANKLIN
Exhibit 1B
SAN FRANCISCO
ANTHONY
DURANGO
WESTERN
SAN ANT
SAN ANTONIO
PAISANO
LEON
OVERLAND
DURANGO
ALLEY A

EXHIBIT "2"

Exhibit 2
10
W Yandell Dr
Upson Dr
Stewart Ct
N Stanton St
N Mesa St
N Oregon St
N Kansas St
El Paso
W Franklin Ave
San Francisco Av
Union Plaza
Durango St
Leon St
85
E 3rd Ave
E 4th Ave
S Santa Fe St
Chihuahu
Zacatecas
Canal Rd
Malecon
Zinc
Bronce
Violetas
S El Paso St
Oregon St
Alley F
© 2013 G
© 2013 I
magery Date: 11/5/2012
1991
31°45'18.23" N 106°29'04

EXHIBIT "3A"

Exhibit 3A
YANDELL
SANTA FE
RAMP
I-10
EL PASO
OREGON
WYOMING
MISSOURI
FRANKLIN
KANSAS
MESA
STANTON
MAIN
PROSPECT
EXIT 19
FRANKLIN
MISSOURI
CIVIC CENTER
OREGON
MAIN
SANTA FE
MILLS
PIRANCO
SHELDON
SAN ANTONIO
SAN FRANCISCO
ANTHONY
WESTERN
SAN ANTONIO
CHIHUAHUA
LEON
EL PASO
OVERLAND
OVERLAND
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MESA
PAISANO
ALLEY B
ALLEY

EXHIBIT "3B"

Exhibit 3B
N Campbell St
© 2013 G
© 2013 I
magery Date: 11/5/2012
1991
31°45'40.65" N 106°29'05.

EXHIBIT "3C"

Exhibit 3C
WYOMING
MISSOURI
PROSPECT
MESA
STANTON
MAIN
KANSAS
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EL PASO
CIVIC CENTER
MAIN
SANTA FE
MILLS
OREGON
MESA
TEXAS
SHELDON
ALLEY D
SAN ANTONIO
EL PASO
SAN ANTONIO
CHIHUAHUA
LEON
ALLEY C
OVERLAND
SANTA FE
ALLEY E
MESA
ALLEY F