



DEPARTMENT HEAD'S SUMMARY REQUISITION FOR COUNCIL ACTION (RCA)

DEPARTMENT: Information Technology

AGENDA DATE: June 21, 2011

CONTACT PERSON/PHONE: Miguel A. Gamiño, Information Technology Director

DISTRICT(S) AFFECTED: All

SUBJECT:

Approve three items related to the shared services agreement for information technology:

1. Interlocal Agreement between City and County for Shared Datacenters and Enhanced Communication and Connectivity;
2. Lease of space TO County at City's MSC facility for shared primary datacenter; and
3. Lease of space BY City at County MDR building for shared backup datacenter.

BACKGROUND/DISCUSSION:

In December 2010, the City and County entered into an agreement for consolidation of management of the City and County Information Technology Department. The combined departments have developed a comprehensive strategy for providing speed, redundancy, uninterrupted service and disaster recovery of the City's and County's electronic data, software, communication system, computer systems and related hardware. The strategy includes construction of a primary and backup datacenter located in separate locations and shared by both entities.

The action requested above will approve the Interlocal Agreement that solidifies the sharing of two datacenter facilities between the City of El Paso and El Paso County. The first lease agreement allows for the City of El Paso to approve the lease of space at the MSC-East POD (Performance Optimized Datacenter) by the El Paso County as the primary datacenter for both parties. The second lease allows for the City of El Paso to lease space from the County-owned MDR facility to be used as the backup datacenter for both parties.

PRIOR COUNCIL ACTION:

The purchase of the POD (Performance Optimized Datacenter) was approved by City Council on April 26, 2011.

AMOUNT AND SOURCE OF FUNDING:

This action does not require any additional funding.

BOARD/COMMISSION ACTION: N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

DEPARTMENT HEAD:

Miguel A. Gamiño, Information Technology Director

Information copy to appropriate Deputy City Manager



Mayor  
John F. Cook

City Council

District 1  
Ann Morgan Lilly

District 2  
Susannah M. Byrd

District 3  
Emma Acosta

District 4  
Carl L. Robinson

District 5  
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District 6  
Eddie Holguin Jr.

District 7  
Steve Ortega

District 8  
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City Manager  
Joyce A. Wilson

STATE OF TEXAS )  
 ) MDR LEASE AGREEMENT FOR  
 ) CITY IT OPERATIONS  
COUNTY OF EL PASO )

THIS LEASE AGREEMENT is made and entered into this 21st day of June, 2011, by and between COUNTY OF EL PASO, TEXAS a political subdivision of the State of Texas (the "Lessor"), and THE CITY OF EL PASO, TEXAS a municipal corporation (the "Lessee").

### RECITALS

**WHEREAS**, the Lessor and the Lessee are local governments as defined in Texas Government Code, Section 791.003(4), have the authority to enter into this agreement, have each entered into this agreement by the action of its governing body in the appropriate manner prescribed by law, and each party paying for the performance of said functions of government shall make those payments from current revenues available to the paying party;

**WHEREAS**, the Lessor owns property in the County of El Paso, Texas located 800 E. Overland, El Paso, Texas 79901 known as the Momsen, Dunnegan, Ryan Building (the "Property") as more particularly described on **Exhibit A**, attached hereto;

**WHEREAS**, the Lessor has recently renovated a space on the 4<sup>th</sup> floor of the Momsen, Dunnegan, Ryan Building measuring approximately 17 feet by 75 feet, or 1,275 square feet, with specialized HVAC, fire suppression, back-up coolers and generators and other specialized computer requirements (collectively, the "MDR Datacenter" or the "Building") pursuant to its authority under the County Purchasing Act, Texas Local Government Code Chapter 262;

**WHEREAS**, the Lessee and Lessor desire to co-locate their Information Technology operations through shared datacenters in order to enhance the speed, redundancy, uninterrupted service and disaster recovery for each entity's electronic data, communications systems, computer systems and related hardware and software ("IT Operations");

**WHEREAS**, the Lessee owns and has built out a Performance Optimized Datacenter ("POD") located at 1059 Lafayette, El Paso, Texas 79907 known as the Municipal Services Center for a shared datacenter and, concurrent with this Agreement, has entered into a Lease Agreement ("MSC Datacenter Lease") to lease an undivided portion of the 800 square foot POD as a datacenter and will lease approximately 40% of the available rack space to the Lessor for its use as a datacenter for County's IT Operations.

**WHEREAS**, the Lessor owns certain fiber optic cable within the City of El Paso and leases additional fiber optic cable that Lessor agrees it will lease and sublease, respectively, to Lessee by one or more separate agreements for County's internal communication needs;

**WHEREAS**, the Lessor and Lessee will enter into one or more agreements whereby the City conveys to the County certain microwave equipment and the County permits the City to use such microwave equipment for City's internal communication needs;

**WHEREAS**, the Lessee desires to lease approximately 40% of the unoccupied rack space in the MDR Datacenter in order to conduct the City's IT Operations and the Lessor desires to lease to the Lessee such space in the MDR Datacenter that will be located on the Property (the "Premises"), as more particularly described on **Exhibit B**, attached hereto;

NOW, THEREFORE, in consideration of the foregoing and the, mutual terms and provisions contained herein, the parties hereto agree as follows

## SECTION 1. DEMISE OF PREMISES; QUIET ENJOYMENT

### 1.01. Demise of Premises

Subject to and upon the terms, conditions, covenants and undertakings hereinafter set forth, the Lessor does hereby demise and lease to the Lessee, and the Lessee does hereby lease from the Lessor the Premises as described on **Exhibit B**, constituting (i) approximately 40% of the unoccupied rack space within the Premises for the purpose of operating the City's IT Operations.

### 1.02. Quiet Enjoyment.

Subject to the provisions of Section 10 below, the Lessor covenants and agrees that upon the Lessee provide the consideration and performing all or the covenants and conditions of it herein set forth; the Lessee shall and may peaceably and quietly have, hold and enjoy the Premises hereby demised, for the Term herein provided.

### 1.03. Utilities and Maintenance

The Lessor will provide at the Premises all public utilities and building maintenance services, including, but not limited to, water, electricity, and gas, heating, air conditioning, janitorial and maintenance services. The utility and maintenance services will be those provided for Lessor operations generally at the Property, as further described in Sections 4 and 5 of this Agreement. The Lessor will coordinate with Lessee if other or additional services are required by Lessee who shall bear the cost of such additional services.

### 1.04. Access Rights

The Lessor hereby grants to Lessee, a non-exclusive license to enter the Property to access the Premises in order to conduct its IT operations at the MDR DATACENTER. In addition, Lessee is granted the right to the non-exclusive use of the parking on the Property and other public or common areas at the Property. The Lessee shall be permitted to use such Property to the extent the Lessee's use does not interfere with the use of the Property by the Lessor.

## SECTION 2. COMMENCEMENT DATE AND TERM; CONSTRUCTION

### 2.01. Commencement Date.

The commencement date of this Lease is the day and year first above written; and the parties shall have vested rights immediately upon the execution of this Lease, and this Lease shall be binding and in full force and effect in accordance with its terms upon such execution; provided that the right of the Lessee to possession of the Premises shall commence simultaneously on the Possession Date (as hereinafter defined).

### 2.02. Initial Term of Lease.

The initial term of this Lease shall be for a period of 20 years plus the number of days between the date hereof and the Possession Date, commencing as provided above and terminating on the 20th anniversary of the Possession Date; provided that this Lease may be earlier terminated on the various terms and conditions described in Section 10 below.

### 2.03. Option to Extend.

If not then in default under this Lease, the Lessee shall have the option to extend this Lease for two additional 20 year periods, which options must be exercised by written notice to the Lessor at least 90 days prior to the end of the immediately preceding term. Such extended term shall be on the same terms and conditions as the initial term.

### 2.04. Property Improvements and Equipment Purchases.

(a) It is understood by the parties hereto that the MDR Datacenter was recently refurbished by the Lessor and that various improvements were necessary to make the Property suitable for use as a Datacenter by the Lessor and the Lessee. The work undertaken by the Lessor, at its own cost, consisted of site preparation of the Property as more particularly described under **Exhibit A**.

(b) It is understood by the parties hereto that the Lessee will purchase significant City Equipment which it will locate at the Premises, at its sole cost and expense, to make the Premises suitable for its specific purpose of conducting its IT Operations.

(c) Lessor shall construct the applicable improvements in a good and workmanlike manner in accordance with all applicable public bidding statutes.

## SECTION 3. IMPUTED RENT AND CONSIDERATION IN LIEU OF RENT

### 3.01 Imputed Rent

It is the agreement of the parties that the value paid by the City to the County for the use of the MDR Datacenter and the consideration paid by the County to the City for use of the MSC

Datacenter are nearly equal. There is a value to both entities to have shared primary and backup datacenters for its internal IT networks. Because the value of the two systems is nearly equal to each entity and the redundant datacenters for each entity's IT resources serve governmental purposes, as long as each entity provides space to the other in the datacenter located on its property, neither will be required to pay cash to the other entity. The parties hereby agree that for purposes of determining the damages provided in various sections of this agreement rent shall be imputed to be \$7,000.00 per month ("the Imputed Rent"). The Imputed Rent shall be adjusted upward by 10%, compounded, on the fifth anniversary of the Possession Date and every five years thereafter.

### 3.02 Consideration in Lieu of Rent

During the term of this Lease, the Lessee hereby covenants and agrees that in lieu of the payment of monetary rent for the Premises, the Lessee covenants and agrees to lease to the Lessor a portion of premises at 1059 Lafayette, El Paso, Texas 79907 for the shared datacenter as more particularly described in the MSC Datacenter Lease that the Lessor and Lessee have concurrently approved. It is the general intent of the parties hereto that the two leases between the Lessor and the Lessee and the covenants to provide the space and services described therein are adequate consideration for each of the leased premises and no further monetary payment shall be made for the respective leased premises.

## SECTION 4. TAXES, ASSESSMENTS AND UTILITIES

### 4.01. Taxes and Assessments.

The Lessee shall pay, as and when due and payable, and to the extent applicable, all taxes and other assessments of whatsoever kind and nature which have been or may be levied against the personal property owned by the Lessee and located in or about the Premises. In addition, the Lessee shall (i) if billed directly to the Lessee, pay as and when due in accordance with their terms or (ii) if billed to the Lessor, pay as and when due in accordance with their terms or, if later, ten days after provided with the applicable statements by the Lessor, any and all taxes and assessments levied against the real property comprising the Premises.

### 4.02. Utilities.

The Lessor shall pay and discharge all charges by any public or private utility or others for gas, water, sewerage, garbage disposal, security lights, electric power or telephone or other services furnished to or placed upon the Premises during the term hereof and, to the extent allowed by Texas state law, shall hold the Lessee harmless therefrom.

## SECTION 5. CONDITION OF PREMISES; REPAIR AND MAINTENANCE; RIGHT OF ENTRY; RIGHT TO MAKE REPAIRS

### 5.01. Condition of Premises.

The Lessee, by its execution of this Lease, expressly acknowledges the fact that it has received the Premises in good order and condition.

#### 5.02. Lessor's Obligations.

(a) The Lessor shall throughout the term of this Lease, maintain the roof, outside walls (not including garage, freight or other doors, windows or plate or other glass that constitute part of the Premises) and structural portions of the Building, as well as the heating, cooling and fire sprinkler systems, in good repair and condition, provided the damage thereto shall not have been caused by the negligence of the Lessee or the Lessee's licensees, agents, employees or customers, in which event the Lessee shall be fully responsible, at its sole cost and expense, therefore. The Lessee shall notify the Lessor in writing of the need of any repair required to be made by the Lessor, and the Lessor shall thereafter have a reasonable time in which to cause such repairs to be made in a good and workmanlike condition.

(b) The Lessor shall through. the term of this Lease, at its own Cost and expense, keep, maintain and preserve or cause to be kept, maintained and preserved the Premises including, but not limited to, the interior of the Premises and any other leasehold improvements, concrete floor surfaces and floor coverings, all glass and windows of any type and all partitions, doors, fixtures, equipment and appurtenances thereof, including electrical and plumbing, and all other improvements and equipment installed therein or thereabout in good order, condition and repair, making replacements thereof as may be necessary. All repairs, restorations and replacements shall be of quality and class equal to the installations made in connection with the work described in Section 2.04 above and shall be done in a good and workmanlike manner.

#### 5.03. Right of Entry and Inspection.

The Lessee shall permit the Lessor or the Lessor's duly authorized agents, employees or representatives to enter upon the Premises at all reasonable times for the purpose of inspecting the Premises or making such repairs or alterations therein or thereto as may be required hereunder of the Lessor or necessary for the safety and preservation thereof. Further, at any time within 60 days prior to the expiration of this Lease, or any renewal term hereof, the Lessor may enter the Premises for the purpose of showing the Premises to any prospective tenant.

#### 5.04. Right to Make Repairs

Subject to the provisions of Section 5.02(b) above, Lessor shall make all repairs, alterations and improvements required of it hereunder at its own cost and expense. However, in the case of the neglect of or default of a party in making any required repairs, the other party may do so during the term hereof and all reasonable costs and expenses thereof with interest thereon at the rate of 14 percent per annum from the date any such sums are expended shall be repaid by the party on behalf of which the repairs were made to the other party immediately upon demand; provided that interest shall not so accrue during any period that any such amounts are being contested by a party hereto in good faith by appropriate proceeding. The receipted bills of the mechanics or contractors employed by the party making the repairs showing the payment by the party for the making of such repairs, alterations or improvements shall be prima facie evidence of

the reasonableness of such charges and that they have been paid by the party.

## SECTION 6. ALTERATIONS

### 6.01. Alteration.

During the term of this Lease, the Lessee shall make no alterations, additions or improvements in or to the Premises except to the extent (i) reasonably necessary for the operation of the Lessee's business on the Premises; or (ii) the written approval of the Lessor first is obtained. Any such alterations, additions or improvements shall at once become a part of the Premises and, subject to the provisions of Section 6.02 below, shall become the property of the Lessor upon the termination or this Lease

### 6.02. Lessee's Property.

The Lease may, at any time and from time to time during the term of this Lease, locate, place, direct or install upon or in the Premises all such personal property including without limitation the City Equipment, or other machinery, equipment, tools, supplies,, appliances and furniture to be used in the Lessee's business or otherwise (collectively, the "Lessee's Property"). The Lessee shall, upon the termination of this Lease, remove the Lessee's Property, and the Lessee, at its sole cost and expense, shall repair all damages to the Premises occasioned by the installation or removal of the Lessee's Property. Any leasehold fixtures or improvements installed by the Lessee pursuant to Section 6.01 above shall, if they can be removed from the Premises without causing irreparable damage, also be included within the definition of the Lessee's Property for all purposes.

## SECTION 7. INSURANCE; INDEMNIFICATION

### 7.01. Fire and other Casualty Insurance

The Lessor shall throughout the term of this Lease keep the Building, including the Premises, insured for the benefit of the Lessor and the Lessee, as their interests may appear, against loss or damage by fire, and against loss or damage by other risks embraced by "extended coverage" and against civil commotions, riots, vandalism and malicious mischief. All of such insurance shall be in such amounts and with such companies as the Lessor, following consultation with the Lessee, may determine. The cost of any such insurance on the Premises shall be borne by the Lessor. In addition, the Lessee agrees to maintain throughout the term of this Lease in full force and effect policies of fire and extended coverage on all of the Lessee's Property and other fixtures, equipment, contents, inventory and ether property either situated or installed by the Lessee in the Premises. Lessee may provide to Lessor evidence of self-insurance in lieu of such policies for such insurance coverage, as set forth in Section 7.07.

### 7.02. Liability Insurance.

(a) The Lessee shall throughout the term of this Lease provide and keep in force for the benefit of the Lessor and the Lessee, as co-insureds and as their respective interests may appear, comprehensive general liability insurance in an amount not less than \$500,000 for each person and \$1,000,000 for each single occurrence for bodily injury or death and \$500,000 for each single occurrence for injury.

(b) The Lessor shall throughout the term of this Lease provide and keep in force for the benefit of the Lessor and the Lessee, as co-insureds and as their respective interests may appear, comprehensive general liability insurance for areas in and about the Building constituting common areas in an amount not less than \$1,000,000 for bodily injury or death arising out of any one occurrence and not less than \$500,000 for property damage arising out of any one occurrence.

(c) If the nature of the Lessee's business is such as to place any or all of the employees of the Lessee under the coverage of local worker's compensation or similar statute, then the Lessee shall also keep in full force, at its sole cost and expense, so long as this Lease remains in effect and during such other time as the Lessee occupies the Building, the Premises, or any part thereof, worker's compensation or similar insurance affording statutory coverage within statutory limit.

#### 7.03. Indemnification of Lessor.

To the extent permitted by Texas state law, the Lessee hereby indemnifies and agrees to hold the Lessor harmless from any and all claims, actions, demands, liability and expense in connection with the loss of life, personal injury and/or damaged property, and from any penalty, damage or charge imposed for any violation of any law, restriction or ordinance, arising from or out of any occurrence in, upon or at the Premises, or from or out of the use or occupancy by the Lessee, or any agent or concessionaire of the Lessee, or from or out of any breach of this Lease by, or any act or omission of the Lessee, its agents, contractors, employees, servants, sublessees or concessionaires, provided that such indemnification shall not cover and such damages occasioned by negligence or misconduct of the Lessor, its agents, contractors, employees, servants or concessionaires. In the event the Lessor shall, without fault on its part, be made a party to any litigation commenced by or against the Lessee, then to the extent permitted by Texas state law the Lessee shall protect and hold the Lessor harmless and pay all costs and expenses incurred or paid by the Lessor in connection with such litigation. Costs and expenses shall, in all cases, include reasonable attorneys' fees and other reasonable expenses incurred by the Lessor in enforcing any of the provisions of this Lease or in defending itself against any claim arising hereunder.

#### 7.04. Indemnification of Lessee.

To the extent permitted by Texas state law, the Lessor hereby indemnifies and agrees to hold the Lessee harmless from any and all claims, actions, demands, liability and expense in connection with the loss of life, personal injury and/or damaged property, and from any penalty, damage or charge imposed for any violation of any law, restriction or ordinance, arising from or out of any occurrence in, upon or at the Building other than the Premises, or from or out of the use or occupancy by the Lessor, or any agent or concessionaire of the Lessor, or from or out of any breach of this Lease by, or any act or omission of the Lessor, its agents, contractors, employees, servants, sublessee or concessionaries, provided that such indemnification shall not cover and such

damages occasioned by the negligence or misconduct of the Lessee, its agents, contractors, employees, servants or concessionaires. In the event the Lessee shall, without fault on its part, be made a party to any litigation commenced by or against the Lessor, then the extent permitted by Texas state law the Lessor shall protect and hold the Lessee harmless and pay connection with such litigation. Costs and expenses shall, in all cases, include reasonable attorneys' fees and other reasonable expenses incurred by the Lessee in enforcing any of the provisions of its Lease or in defending itself against any claim arising hereunder.

#### 7.05. Waiver of Subrogation

The Lessor and the Lessee hereby release each other from any and all liability or responsibility to the other or any one claiming through or under them by way of subrogation or otherwise for any loss or damage to property caused by fire or any of the extended coverage casualties, even if such fire or other casualty shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, however, this release shall be applicable and in force and effect only with respect to loss or damage occurring during such time as the releasor's policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasor to recover thereunder. The Lessor and the Lessee each agree that it will request its insurance carriers to include in its policies such a clause or endorsement.

#### 7.06 Equipment Maintenance and Insurance.

(a) Each Party shall acquire, install and maintain the computer equipment that each Party uses in the Premises at the sole cost of the Party providing the equipment. Maintenance, as used in this paragraph includes but is not limited to: (1) service and warranty on hardware and software and (2) upkeep, repair and replacement of Party specific telecommunication equipment.

(b) Each Party shall be responsible for insuring the communication and computer equipment and related furnishings and supplies it places within the Premises.

#### 7.06. Self-Insurance.

The Lessor and the Lessee may, with the reasonable approval of the other, insure against any of the risks described in this Section 7 by provision of self-insurance; provided that consent of a party to the self-insurance of the other with respect to one class of risk shall in no event constitute approval of self-insurance for any further class or in any further instance.

### SECTION 8. DESTRUCTION BY FIRE OR CASUALTY; LOSS AND DAMAGE

#### 8.01. Destruction by Fire or Casualty.

In the event the Building, or any part thereof, shall be damaged by fire, explosion, windstorm or other casualty, then the Lessor shall have the option to rebuild or repair the Building in as good condition as the Building was in immediately prior to such damage or destruction; such

repair or rebuilding to be commenced within a reasonable time after notice in writing by the Lessee to the Lessor of such damage. In such a case, this Lease shall continue in full force and effect, provided however, that if the damage is to the extent that it interferes with the conduct of the Lessee's business in the regular course, the Lessee shall be entitled to the payment of the Imputed Rent, in cash or in-kind contribution, as the parties may agree, hereunder and in the MDR Datacenter Agreement unless the Lessor shall establish that such damage was occasioned by the negligence of the Lessee, its agents or employees. In the event the Lessor shall elect not to rebuild or repair the Building, and as a result the Premises are no longer suitable for the uses of the Lessee, the Lessor shall so notify the Lessee within 30 days following the date the Lessor is notified of the casualty in which event this Lease shall terminate and become null and void. In the event of termination, the Imputed Rent and other charges under this Lease and the MDR Datacenter Lease shall be adjusted from the date of such casualty loss.

#### 8.02. Loss or Damage.

Notwithstanding any other provision in this Lease to the contrary, the Lessor shall not be liable for any damage to the property of the Lessee or of others located on or in the Building, nor for the loss or damage to any property of the Lessee or others by theft or otherwise; and the Lessor shall not be liable for any injury or damage to persons or property resulting from fire, explosion, falling plaster, gas, electricity, plumbing, heating or air conditioning, water, rain, snow, leaks from any part of the Building or from the pipes, appliances or plumbing works or from the roof, street or subsurface or any other place or by dampness, or by any other cause of whatsoever nature provided that such injury or damage shall not have arisen from the negligence, omission, or misconduct of the Lessor, his agents or successors or persons upon Premises under authority of Lessor. Nor shall the Lessor be liable for any such damage caused by other Lessees or persons occupying space within the Building or by the public.

### SECTION 9. CONDEMNATION

#### 9.01. Condemnation of All or Substantially All of the Premises.

If during the term of this Lease, all or substantially all of the Premises should be taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain, or should it be sold to the condemning authorities under threat of condemnation, this Lease shall terminate on the date possession of the Premises shall be taken thereunder and all rents, taxes and other charges shall be prorated and paid to such date.

#### 9.02. Partial Taking.

(a) If less than all but more than 25 percent of the Premises shall be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or should be sold to the condemning authorities under threat of condemnation or should access to and from the Premises to a public street be cut off under the power of eminent domain by any public or quasi-public authority or by reason of purchase under threat thereof, the Lessee shall have the option to terminate this Lease as of the date of the taking, by giving notice to

the Lessor of such election so to terminate within 30 days from the date of such taking.

(b) In the event of a taking of any portion of the Premises, if this Lease shall not be terminated as provided in (a) above, this Lease shall remain unaffected except (i) the Imputed Rent defined in Section 3.01 shall be proportionately reduced from and after the date of the taking, to reflect the remaining interest of the Lessee in the Premises described in Exhibit B, unless the Lessor chooses to move the MDR DATACENTER to another location without cost to the Lessee.

9.03. Condemnation Award.

In case of any such taking, whether of all or any part of the Building or the Premises, and regardless of whether this Lease survives, the entire award shall belong to the Lessor, and the Lessee hereby assigns such award to the Lessor, provided that any amount payable specifically with respect to the leasehold interest of the Lessee shall remain the property of the Lessee, and provided however, it is parties' intention that Lessee recover in the event of a condemnation by a third party, the damages and awards Lessee would be entitled to under the laws of Texas, all other language in this section to the contrary.

9.04. Covenant Against Condemnation.

To the maximum extent permitted by applicable law, the Lessor and the Lessee each covenants and agrees to and with the other that any power of eminent domain or condemnation that either may possess under the Constitution or the laws of the State of Texas shall not be exercised by it against the other with respect to the Building or any portion thereof during the term of this Lease.

## SECTION 10. EARLY TERMINATION

10.01. Termination by Lessor.

Notwithstanding the term of this Lease specified in Sections 2.02 and 2.03, after the tenth anniversary of the Possession Date, the Lessor may, upon 18 months prior notice to the Lessee, terminate this Lease; provided that (i) the Lessor pays to the Lessee damages determined pursuant to Section 10.03 below; and (ii) the termination is for the purpose of allowing the Lessor to use the space represented by the Premises for a bona fide governmental purpose. If the Lessor assigns its rights under this Lease to a person other than the United States of America, any agency or instrumentality thereof, or the State of Texas, a political subdivision, agency or instrumentality thereof, then the Lessor's rights under this Section 10.01 shall terminate and be void and of no force and effect without further action.

10.02. Termination of Lessee.

Notwithstanding the term of this Lease specified in Sections 2.02 and 2.03 above, after the tenth anniversary of the Possession Date, the Lessee may, upon 18 months prior notice to the Lessor, terminate this Lease; provided that (i) the Lessee pays to the Lessor damages determined

pursuant to Section 13.03(b) below. The terms of this Section shall have no impact on the obligation of the Lessee to repair and restore the Premises of Lessor, as required in Section 5.

#### 10.03. Lessee's Damages.

(a) In the event of a termination of this Lease by the Lessor pursuant to Section 10.01 above, the Lessee shall be entitled to damages equal to the appraised value of the loss of the leasehold (the "Leasehold Value). To determine the Leasehold value, the Lessor shall select a qualified, independent real estate appraiser who shall appraise the fair market value of the remaining term of the Lessee's Lease hereunder, taking into account (i) the remaining years in the term, including renewal options as if exercised; and (ii) the then prevailing rental rates for similar space.

(b) Should the Lessee disagree with the Leasehold Value as determined by the appraiser selected by the Lessor, the Lessee shall commission an appraisal by a qualified, independent appraiser of its choice; provided that such second appraiser shall appraise the Leasehold Value on the same basis as described in (a) above. In the event the two appraisals as concluded are within ten percent of each other in value, the two shall be averaged and the resulting figure shall be the Leasehold Value, binding on each party.

(c) Should the two appraisals differ by an amount in excess of ten percent, unless the parties otherwise agree, the two appraisers shall themselves designate a third, who shall review both appraisals and determine the Leasehold Value based upon such review and such other investigation as such third appraiser deems necessary. The determination of the Leasehold Value by the third appraiser shall be conclusive and binding on both parties.

(d) The cost of the first appraisal shall be borne by the Lessor. The cost of the second appraisal shall be borne by the Lessee, unless the value determined by the second appraisal is within ten percent of the first appraisal, in which event the cost shall be borne by the parties equally, as shall be the cost of the third appraisal, if any.

(e) A termination of this Lease by the Lessor under Section 10.1 above shall be effective on the date specified in the Lessor's notice, notwithstanding the pendency of a determination of the Leasehold Value hereunder, which shall be done as expeditiously as possible.

### SECTION 11. ASSIGNMENTS; SUBLETTING

#### 11.01. Lessee's Right to Assign, Lease or Sublet.

Neither the Lessor nor the Lessee shall assign this Lease or any interest therein, and neither the Lessor nor the Lessee shall lease, sublease or sublet any portion of the space within the Premises or any interest therein, except by the written permission and consent of the other being first had and obtained, references elsewhere herein to assignees or sublessees notwithstanding. Consent to one lease, assignment or subletting shall not constitute consent of any subsequent or other lease, assignment or subletting. This prohibition against assignment and subletting shall be construed to include a prohibition against any subletting or assignment by operation of law.

Notwithstanding the foregoing, under no circumstances shall any portion of the Premises be assigned or sublet to any person for a use other than for the purposes described in Section 14.02 below.

11.02. Lessor's Right to Assign.

The Lessor may assign, in whole or in part, the Lessor's interest in this Lease and may sell all or part of the Building, provided that (i) the Lessor provides the Lessee with at least 30 days prior notice thereof; (ii) such assignment or sale does not adversely affect the rights of the Lessee hereunder; and (iii) unless the assignment or sale is to the United States, the State of Texas, or a political subdivision thereof, or an agency or instrumentality of any of the foregoing, the Lessee approves such assignment or sale in its reasonable discretion.

SECTION 12. LESSEE'S DEFAULT

12.01. Events of Default.

It shall be an event of default by the Lessee hereunder if (a) the Lessee shall be in default of the lease of the MSC space to the County pursuant to the MSC Datacenter Lease as herein required; (b) the Lessee shall fail to observe or perform any of its obligations hereunder; (c) at any time during the term of this Lease the Lessee shall file or be subject to in any court a petition in bankruptcy or insolvency or reorganization within the meaning of any applicable state or federal bankruptcy laws; or (d) the Lessee abandons the Premises or ceases the operation of its business on the Premises for a period of 120 days, excluding any period during which repairs are being procured and/or authorized by the Lessee's governing body, repairs are actually in the course of being made to the Premises, or any period occasioned by acts or omissions of the Lessor.

12.02. Lessor's Remedies.

(a) Upon the occurrence of an event of default enumerated in subsection (a) or (b) of the Section 12.01 above, should such default remain uncured after 30 days notice of default, the Lessor may at once thereafter or at any time subsequent during the existence of such breach or default enter into and upon the Premises or any part thereof and repossess the Premises, expelling and removing therefrom all persons and property (which property may be removed and stored at the cost, and for the account of the Lessee), using such force as may be necessary, and either (i) terminate this lease, holding the Lessee liable for damages for its breach. Upon the occurrence of an event of default enumerated in subsection (c) of Section 12.01 above, the Lessor may, if the Lessor so elects, at any time thereafter terminate this Lease and the term hereof, upon giving to the tenant ten days notice in writing of the Lessor's intention so to do, and this Lease and the term hereof shall expire and come to an end on the date fixed in such notice as if said date were the date originally fixed in this Lease for the expiration hereof. If Lessor declares the lease in default and takes possession, no further penalties or late charges shall accrue against Lessee.

(b) Notwithstanding the foregoing, any event of default, the curing of which shall actually require more than 30 days because of any cause beyond the Lessee's control, shall be

deemed cured by the Lessee if the Lessee shall have commenced to cure the default within the 30-day period and shall thereafter have successfully prosecuted the cure of the default with due diligence.

#### 12.03 Lessor's Right to Cure.

If the Lessee shall be in default in the performance of the covenants contained herein the Lessor shall have the right to make any payment or perform any act required of the Lessee under any provision of this Lease, and, in exercising such rights, to incur necessary and incidental costs and expenses, including reasonable attorneys' fees. All payments made and all costs and expenses incurred by the Lessor in connection with any exercise of such right, together with interest thereon at the rate of 14 percent per annum from the respective dates of the making of such payments or the incurring of such costs and expenses, shall be reimbursed by the Lessee immediately upon demand; provided that no interest shall be applicable to the extent that the amount of any payment required by the Lessor of the Lessee under this section 12.03 is being contested by the Lessee in good faith by appropriate proceeding. Notwithstanding the foregoing, nothing herein shall imply any obligation on the part of the Lessor to make any payment or perform any act required of the Lessee hereunder.

#### 12.04 Force Majeure.

The term "force majeure" as used herein shall mean any circumstance or condition beyond the control of Lessee that might be acts of God or intervention of federal or state law or any order, rule or regulation of governmental authority, or officers and agents thereof. The breach by Lessee of any obligation arising hereunder shall not work a forfeiture or termination of this Agreement or reversion of the estate created hereby nor be grounds for cancellation in whole or in part. Should Lessee be prevented from complying with any express or implied covenant because of operation of force majeure, Lessee's obligation to comply with such covenant shall be suspended, and Lessee shall not be liable in damages for failure to comply therewith, and this lease shall be extended while and so long as Lessee is prevented by any such cause from conducting its obligations herein, and the time while Lessee is so prevented shall not be counted against Lessee, anything in this lease to the contrary notwithstanding.

#### 12.05 Remedies Cumulative.

All rights and remedies of the Lessor herein enumerated shall be cumulative and none shall exclude any right or remedy allowed by law. Likewise, the exercise by the Lessor of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

### SECTION 13. SURRENDER UPON TERMINATION HOLDING OVER; TERMINATION VALUE

#### 13.01. Surrender Upon Termination.

Upon the expiration or sooner termination of this Lease, the Lessee, at its sole cost and expense, shall quietly and peaceably surrender possession of the Premises in good order and repair and in a clean and sanitary condition, loss occasioned by ordinary wear and tear excepted. It is expressly agreed and understood that, upon and after expiration or sooner termination of this Lease, any and all alterations, additions and improvements, except property constituting the Lessee's Property, made by the Lessee during the term hereof in accordance with the provisions contained in Section 6 above or otherwise, whether attached to the walls, floors, Premises or not, shall immediately merge and become a permanent part of the Premises and any and all interests of the Lessee therein shall immediately vest in the Lessor and all such alterations, additions and improvements shall remain on the Premises and shall not be removed by the Lessee at the termination of this Lease. Any of the Lessee's Property shall be removed by the Lessee at its expense on or before the termination date of this Lease.

#### 13.02. Holding Over.

Except as otherwise herein expressly provided, there shall be any holding over by the Lessee or any assignee or sublessee beyond the expiration or sooner termination of the term of this Lease; if, nevertheless, there be a holding over by the Lessee or any assignee or sublessee, such shall give rise to a month-to-month tenancy upon the same terms and conditions as are provided for herein.

#### 13.03. Termination Value.

(a) Upon the termination of this Lease by the Lessee pursuant to section 10.02 above, the Lessee shall pay to the Lessor the Termination Value for the applicable period determined in accordance with (b) below. In addition, the Termination Value shall also be payable in the event it is finally determined by a court of appropriate jurisdiction that the Lessee purposefully breached this Lease with the intent to vacate the Premises.

(b) The Termination Value is to be computed by (i) totaling the aggregate amount of Imputed Rent remaining to be paid to the Lessor under the minimum remaining initial term of this Lease, assuming that this Lease were to remain in full force and effect from the date of termination to the day of the minimum remaining initial term of this Lease; and (ii) discounting the Termination Value at a rate equal to the per annum rate of interest borne by six week United States Treasury Bills as announced at the auction closest in time to the date of termination. to determine the present value of the payment stream.

### SECTION 14. SIGNS; USE OF PREMISES

#### 14.01. Signs.

The Lessor and Lessee agree neither party shall erect and maintain such billboards or signs to advertise the purpose for which the Lessee is leasing the Premises, except as the parties through the County Judge and the City Manager may agree in writing. Upon the expiration of this Lease, or any renewal or extension hereof, the parties shall remove any signs erected and shall repair any

damage to the Premises caused thereby at the expense of the erecting party or as may be allocated in writing.

#### 14.02. Use of Premises.

The Lessee agrees to use and occupy the Premises solely for the purposes of conducting bona fide government business including without limitation IT Operations and to conform and comply with all applicable municipal, state and federal ordinances, laws, rules and regulations in using the Premises; and not to use or suffer to be used the Premises in any manner in contravention of any applicable municipal, state or federal ordinances, laws, rules and regulations.

#### 14.03 Monitoring the Facility 365 x 24.

Lessor shall be responsible for monitoring the environment and security of the the Premises and the Property and its supporting infrastructure. The Parties recognize that temperature, water, electrical surges, general cleanliness, open doors, and other environmental conditions are matters of substantial concern for the equipment housed in the Premises. The Parties also recognize that the Premises will house millions of dollars of equipment as well as confidential, sensitive and essential records in an electronic format. Lessor will be responsible for monitoring the environmental conditions and security of the facilities every day of the year and every hour of the day. Neither holidays, illnesses, vacancies, bad weather nor other conditions shall relieve Lessor from these responsibilities. Appropriate alarms and alerts and backup systems should be in place, as agreed to by the Parties, to address these ongoing concerns.

#### 14.04 Security and Fire Suppression.

Lessor shall pay for the service contracts to maintain the fire suppression system, security system and other third party contracts necessary for the proper maintenance and support of the infrastructure serving the Premises during the entire term of this contract.

#### 14.05 Shared Datacenter Operations Manual and Disaster Recovery Plan.

The Parties agree to develop and abide by the terms of a Shared Datacenter Operations Manual and a Disaster Recovery Plan, as each may be amended from time to time.

#### 14.06 Datacenter Managers.

Each Party shall designate a Datacenter Manager, and this person is responsible for oversight of the Party's allotted area in the Premises.

#### 14.07 Access.

Lessor hereby grants the rights of ingress to and egress to and from the Premises over and across its roads and parking areas serving the Premises for the Lessee, their agents, invitees, suppliers, vendors, public officials and employees, but not to the general public, subject to the guidelines that may be imposed by Lessor.

14.08 Hours of access.

Lessor agrees Lessee will have access to the Premises during the hours of operation set by Lessor and, in the event of an emergency, at all times. The Parties shall follow emergency notification and access procedures during non-business hours.

SECTION 15. MISCELLANEOUS

15.1. Headings.

The titles and headings given to any section herein are for convenience only and do not define, limit or construe the contents of such sections.

15.2. Binding Effect.

The Lease shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

15.3. Gender and Interpretation.

As used in this Lease and whenever required by the context thereof, each number, both singular or plural, shall include all numbers, and each gender shall include all genders.

15.4. Governing Law.

The laws of the State of Texas shall govern the validity, performance and enforcement of this Lease.

15.5. Attorney's Fees.

If it shall become necessary for either of the parties hereto to employ an attorney to enforce or defend any rights or remedies hereunder, and should such party prevail, such party shall be entitled to reasonable attorneys' fees, court costs and other expenses incurred in such connection.

15.6. Notices.

All notices provided to be given under this Agreement shall be given by hand delivery, or by certified or registered mail, postage paid, addressed to the proper party, or be confirmed telex:

If to the Lessee:                   City of El Paso, Texas  
  City Hall, #2  
  Civic Center Plaza  
  El Paso, Texas 79901  
  Attention: City Manager

With a copy to: City of El Paso, Texas  
City Hall  
#2 Civic Center Plaza  
El Paso, Texas 79901  
Attention: Capital Assets

If to the Lessor: County of El Paso, Texas  
El Paso County Courthouse  
500 E. San Antonio, Room 301  
El Paso, Texas 79901  
Attention: County Judge

With a copy to: County of El Paso, Texas  
El Paso County Courthouse  
500 E. San Antonio, Room 503  
El Paso, Texas 79901  
Attention: County Attorney

The address of either party may be changed from time to time by giving written notice to that effect.

15.7. Waiver.

One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval of either party to or of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent similar act

15.8. Severability.

Every provision of this Lease is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Lease.

15.9. Tax Covenants.

The Lessee covenants and agrees that it will not allow the Premises or any portion thereof to be used in the trade or business of any person other than a governmental unit.

15.10. Entire Agreement and Amendment.

This Lease shall constitute the entire understanding of the parties hereto with respect to the subject matter hereof and no amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the

parties hereto.

15.11. Recording.

The Lessor and the Lessee hereby agree not to record this Lease, but each party agrees to execute upon request of either a "short form lease" or "notice of lease" suitable for recording purposes.

15.12 Times is of the Essence.

Time is and shall be deemed of the essence in respect to the performance of each provision of this Agreement.

IN WITNESS WHEREOF, the undersigned Lessor and. Lessee have executed this Agreement as of the day and year first above written.

**CITY OF EL PASO**

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

\_\_\_\_\_  
Hon. John F. Cook  
Mayor

APPROVED AS TO FORM:



\_\_\_\_\_  
Bertha A. Ontiveros  
Assistant City Attorney

APPROVED AS TO CONTENT:



\_\_\_\_\_  
William F. Studer, Jr., Deputy City Manager  
Financial and Management Support Services

**COUNTY OF EL PASO**

ATTEST:

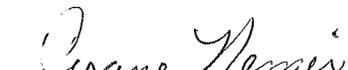


\_\_\_\_\_  
Delia Briones  
County Clerk



\_\_\_\_\_  
Hon. Veronica Escobar  
County Judge

APPROVED AS TO FORM:



\_\_\_\_\_  
Cygne Nemir  
Assistant County Attorney

APPROVED AS TO CONTENT:



\_\_\_\_\_  
Peter Cooper  
Chief Technology Officer



Address **800 E Overland Ave**  
**El Paso, TX 79901**

Get Google Maps on your phone  
Text the word "GMAPS" to 466453

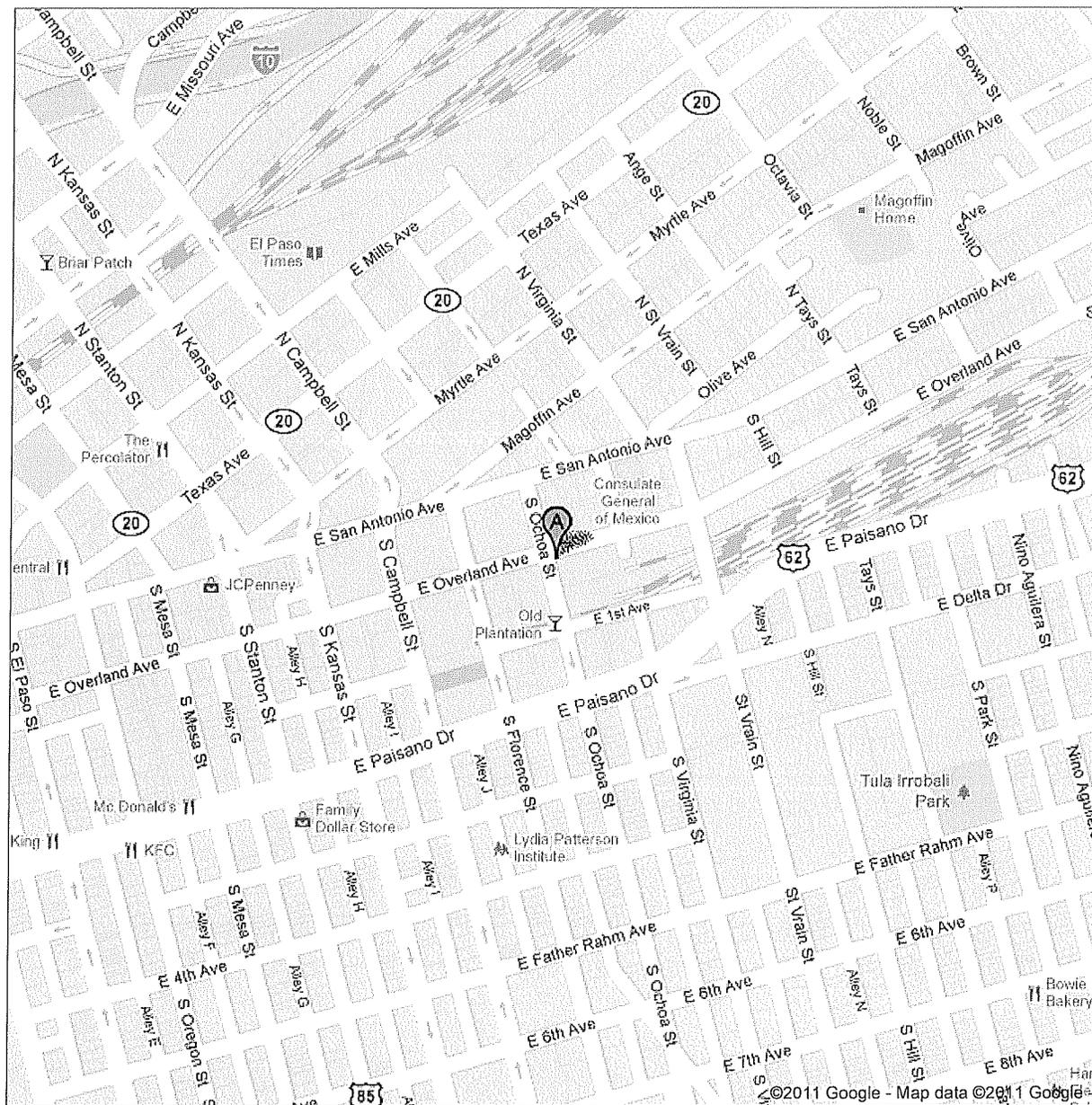



EXHIBIT A - Property Location

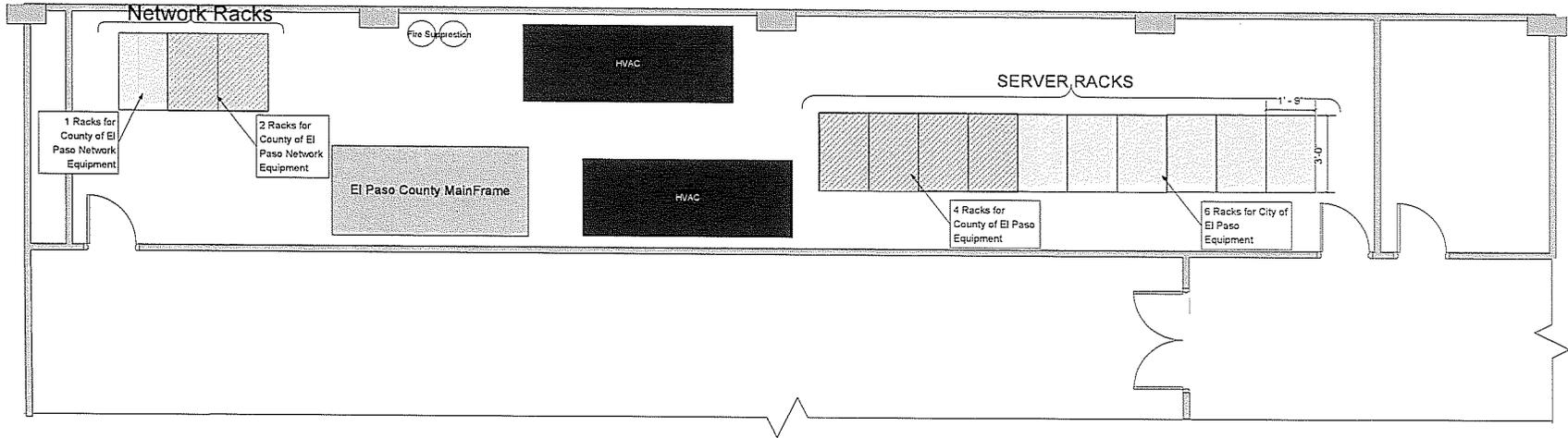
Google maps

To see all the details that are visible on the screen, use the "Print" link next to the map.



EXHIBIT A - Property Location

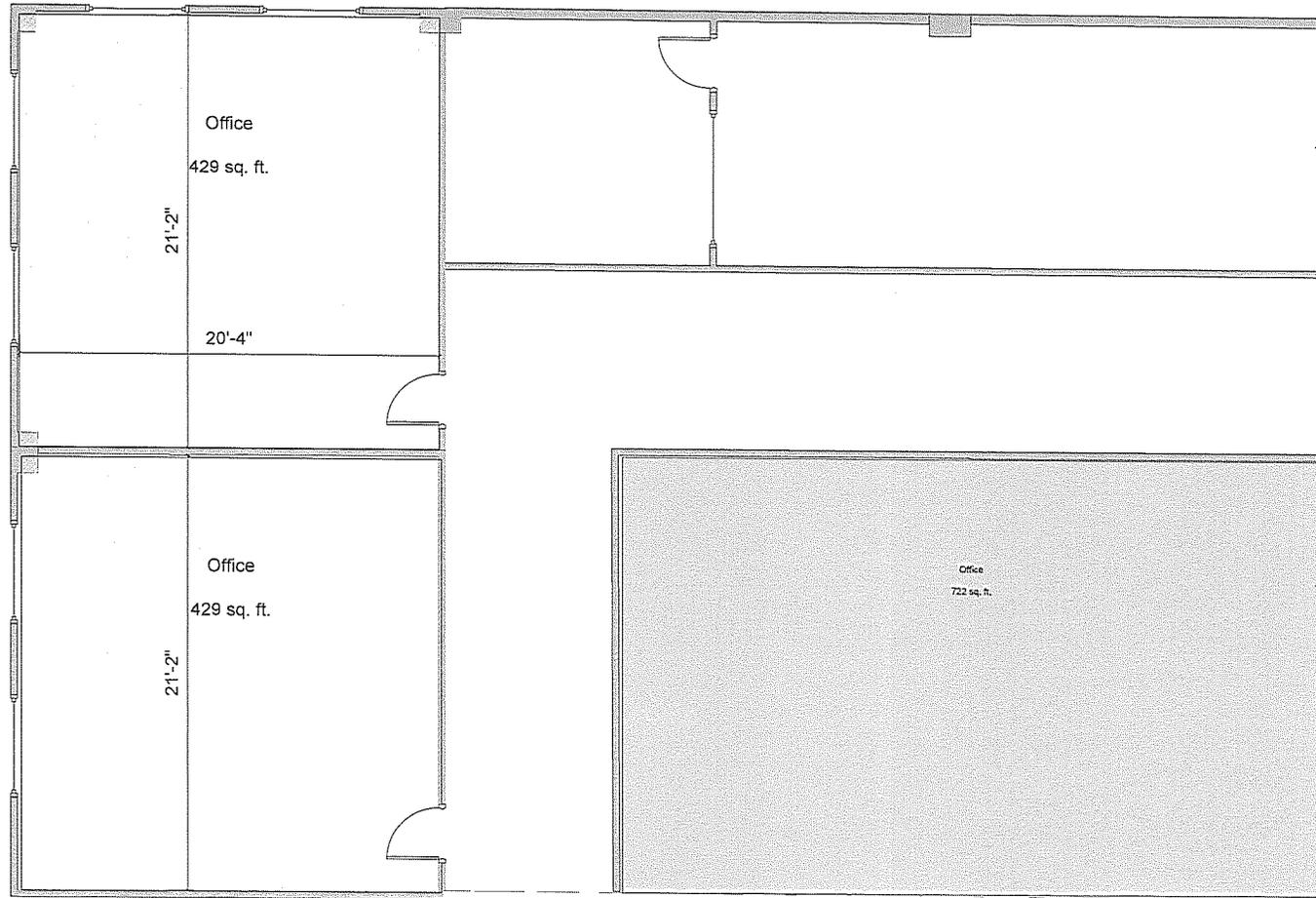
EXHIBIT B - Premises



MDR Datacenter Space

NO.	DESCRIPTION	DATE	BY
NO.	NO.	Version 1	1
NO.	NO.	NO.	NO.

EXHIBIT B - Premises



MDR - Future Datacenter Area

Created by: David Garcia  
For: Server Rack Layout

12/2/2010



Legend



Dell 4210  
Rack

Racks are  
Approx.  
23"x39"