

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

DEPARTMENT: Engineering Department

AGENDA DATE: October 5, 2010

CONTACT PERSON/PHONE: R. Alan Shubert, P.E. - ext. 4423

DISTRICT(S) AFFECTED: Citywide

SUBJECT:

That the City Manager is authorized to enter in to the TxDOT Multiple Use Agreement for Sharing Fiber Optic Cable and/or Related Infrastructure or such substantially similar agreement that may be required by TxDOT from time to time as a condition of installing fiber optic equipment as part of the TxDOT fiber optic system without further authorization from the City Council upon review of the City Attorney.

BACKGROUND / DISCUSSION:

The City installs fiberoptic equipment that connects to or uses existing Texas Department of Transportation (TxDOT) fiberoptic cable and or related infrastructure to transmit transportation related data. TxDOT requires an agreement be entered into prior to such equipment being installed within their fiberoptic system. This action would accelerate the process by allowing the City Manager to sign these agreements.

PRIOR COUNCIL ACTION:

None

AMOUNT AND SOURCE OF FUNDING:

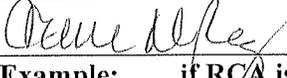
N/A

BOARD / COMMISSION ACTION:

N/A

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

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: 
(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, the City from time to time installs fiber optic equipment that connects to or uses existing Texas Department of Transportation (TxDOT) fiber optic cable and or related infrastructure for the purpose of transmitting transportation-related data; and

WHEREAS, TxDOT requires that an agreement be entered into for such fiber optic installations prior to the installation of such equipment within the TxDOT fiber optic system in El Paso.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager is authorized to enter in to the TxDOT Multiple Use Agreement for Sharing Fiber Optic Cable and/or Related Infrastructure, as sample of which is attached hereto as Exhibit "A" or such substantially similar agreement that may be required by TxDOT from time to time as a condition of installing fiber optic equipment as part of the TxDOT fiber optic system without further authorization from the City Council upon review of the City Attorney.

ADOPTED THIS _____ DAY OF _____ 2010.

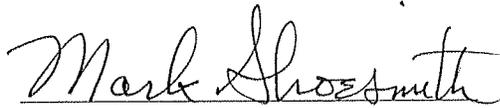
CITY OF EL PASO:

John F. Cook, Mayor

ATTEST:

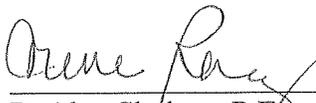
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:



Mark Shoosmith
Assistant City Attorney

APPROVED AS TO CONTENT



for R. Alan Shubert, P.E.
City Engineer

EXHIBIT "A"

STATE OF TEXAS §

COUNTY OF TRAVIS §

MULTIPLE USE AGREEMENT

for

SHARING FIBER OPTIC CABLE and/or RELATED INFRASTRUCTURE

THIS CONTRACT is entered into by the Contracting Parties under Government Code, Chapter 791.

CONTRACTING PARTIES:

Texas Department of Transportation

TxDOT

Local Government

City of El Paso

The Local Government desires to connect to and/or use existing TxDOT Fiber Optic Cable and/or Related Infrastructure for the purpose of transmitting transportation-related data only. Related Infrastructure includes but is not limited to facilities such as conduit, ducts, control cabinets, poles, structures, etc. along TxDOT roadways and right-of-way, as well as offices, operations and control centers, substations, etc. within the TxDOT operations network. The desired connection and use must not cause damage to or adversely effect data, interconnections, systems, facilities, infrastructure or operations as determined by TxDOT.

The governing body, by resolution or ordinance, dated -- enter date of resolution here --, has authorized the Local Government to enter into this agreement.

This contract incorporates the provisions of **Attachment A**, Local Government's Resolution or Ordinance; **Attachment B**, Descriptions and Specifications of Rights Granted in Article 2; **Attachment C**, Request for Authorization of Fiber Optic Cable Connection; **Attachment D**, Request for Authorization of Fiber Optic Cable-Related Infrastructure Connection; **Attachment E**, Map of Mutually Agreed-Upon Fiber Optic Cable and/or Related Infrastructure.

In consideration of the mutual promises contained in this agreement, the TxDOT and the Local Government now agree as follows:

A G R E E M E N T

ARTICLE 1. CONTRACT PERIOD

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and shall terminate five (5) years from that date, or when otherwise modified or terminated, as hereinafter provided.

ARTICLE 2. RIGHTS GRANTED

- A. TxDOT agrees to allow the connection to TxDOT's Fiber Optic Cable and/or Related Infrastructure by the Local Government.
- B. The Local Government shall be allowed to use only the mutually agreed upon TxDOT Fiber Optic Cable and/or Related Infrastructure as listed in Attachments B, C, D, and further illustrated in Attachment E.
- C. The unit of capacity exchange by either shared method shall be mutually agreed upon on a case-by-case basis. Capacity exchanges need not be on an equal basis.
- D. TxDOT permits the Local Government to enter upon its right-of-way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such connections of Local Government's Fiber Optic Cable and/or Related Infrastructure to TxDOT's Fiber Optic Cable and/or Related Infrastructure.
- E. Any and all rights expressly granted to the Local Government to use TxDOT's Fiber Optic Cable and/or Related Infrastructure shall be subject to the prior and continuing right of TxDOT to use its Fiber Optic Cable and/or Related Infrastructure for its own purposes under applicable laws. The rights granted shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the rights to use the Fiber Optic Cable and/or Related Infrastructure.
- F. Nothing in this agreement shall be deemed to grant, convey, create, or vest in either party a real property interest in land, including any fee, leasehold interest, or easement.

ARTICLE 3. OPERATION AND MAINTENANCE RESPONSIBILITIES

- A. Each party will be responsible for the design, engineering, installation, operation and maintenance of their respective Fiber Optic Cable and/or Related Infrastructure system and components, to include the connections, within their respective right-of-ways.

- B. Each party is responsible for providing and maintaining any hardware, software, and additional infrastructure that are necessary to obtain the rights in Article 2. TxDOT may provide unused Intelligent Transportation Systems infrastructure and TxDOT facilities to support the additional infrastructure when possible and when deemed to be in the best interest of TxDOT.
- C. Because of unforeseen circumstances that may arise from the operation of TxDOT hardware or software, or other difficulties in telecommunications transmission over which TxDOT has no control, no guarantee is made that use of facilities will be available to the Local Government at all times during the term of this agreement. TxDOT is not responsible for any loss of revenue to the Local Government due to any interruption in the facilities. TxDOT does not guarantee a minimum response time to re-establish the facilities due to TxDOT network or system failures or any other circumstance.

ARTICLE 4. INSTALLATION STANDARDS

- A. Any installation, repairs, or removal of equipment shall be performed in accordance with industry standards.
- B. At the Local Government's sole cost and expense, all such work shall be done in compliance with all applicable building codes, ordinances, and other laws, rules, or regulations of governmental authorities having jurisdiction over such work, including, but not limited to, the Americans with Disabilities Act and the Texas Architectural Barriers Act.
- C. The Local Government must obtain all required governmental agreements, permits, and authorizations prior to beginning any such work and shall provide copies of the same to TxDOT upon request.
- D. After commencement of the installation of the equipment, the Local Government shall perform such work with due diligence to its completion.
- E. The Local Government is solely responsible for meeting and adhering to the above listed standards notwithstanding TxDOT's approval of plans and specifications.

ARTICLE 5. INSTALLATION OF EQUIPMENT

- A. The Local Government shall install any necessary hardware, software, or other infrastructure at its sole cost and risk.
- B. Any equipment installation, engineering design, or operations and maintenance plan provided by the Local Government shall be subject to TxDOT's review and approval to ensure compatibility with existing equipment and software.
- C. All equipment shall be clearly labeled to identify it as equipment installed by the Local Government.
- D. The Local Government shall provide all interface items required to maintain the equipment.
- E. Access by the Local Government's employees or contractors to the equipment located at TxDOT's facility will be by appointment only and must have designated TxDOT personnel present.

ARTICLE 6. NOTICE TO PROCEED

A properly completed Request for Authorization of Fiber Optic Cable and/or Related Infrastructure Connection form, attached to this agreement as Attachments C and D, shall be submitted to TxDOT for approval prior to any work being done. TxDOT shall review and approve or disapprove the connection, in writing, within sixty (60) days. During the course of the work, any substantial changes or alterations must also be submitted to TxDOT for prior written approval. All work shall be done in conformity with the approved Attachment B, C and/or D. Upon completion of the work, the Local Government shall promptly furnish suitable documentation showing the exact nature of the connection.

ARTICLE 7. FEES

TxDOT may require consideration for the agreement in the form of a payment; shared use of a telecommunication facility; or equipment, facilities, or services. The Local Government shall provide the non-monetary compensation described in Attachment

ARTICLE 8. INSPECTION

Ingress and egress shall be allowed at all times to the Local Government's facility for Federal Highway Administration and TxDOT personnel and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all Local Government activities related to this agreement shall be prohibited until further notice from TxDOT.

ARTICLE 9. INSURANCE

To the extent that this agreement authorizes the Local Government or its contractor to perform any work on State right-of-way, before beginning work the entity performing the work shall provide TxDOT with a fully executed copy of TxDOT's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on State right-of-way. This coverage shall be maintained until all work on the State right-of-way is complete. If coverage is not maintained, all work on State right-of-way shall cease immediately, and TxDOT may recover damages and all costs of completing the work.

ARTICLE 10. AMENDMENTS

Amendments to this agreement must be in writing and executed by both parties. Any amendments must be executed during the contract period established in Article 1, Contract Period.

ARTICLE 11. TERMINATION

- A. Including the provisions established herein, this agreement may be terminated by either of the following conditions:
1. By mutual written agreement, or thirty (30) days after either party gives notice to the other party, whichever occurs first; or
 2. By TxDOT at any time if it is found that traffic conditions have so changed that the existence or use of the respective Fiber Optic Cable and/or Related Infrastructure is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated or maintained or that it is not in the public interest; or
 3. By TxDOT, upon written notice to the Local Government as consequence of the Local Government's failure to comply with the requirements of this agreement, unless the Local Government's failure to comply with the agreement is due to no fault of its own.
- B. If the termination is due to the failure of the Local Government to fulfill its contractual obligations, TxDOT will notify the Local Government that a possible breach of contract has occurred. The Local Government must remedy the breach as outlined by TxDOT to TxDOT's satisfaction within thirty (30) days from receipt of TxDOT's notification, provided, however, that in the event such cure reasonably requires more than thirty (30) days to complete, the Local Government shall prosecute and complete said cure with due diligence and in a timely manner as agreed by both parties. TxDOT will declare this agreement terminated upon the Local Government's failure to remedy the breach as provided within.
- C. Termination of the agreement shall extinguish all rights, duties, obligations and liabilities of TxDOT and the Local Government under this agreement.
- D. Termination or expiration of this agreement shall not extinguish any of the Local Government's or TxDOT's obligations under this agreement that by their terms continue after the date of termination or expiration.

ARTICLE 12. REMEDIES

Violation or breach of contract by the Local Government shall be grounds for termination of the agreement and any increased costs of modifying and or repairing the Fiber Optic Cable and/or Related Infrastructure used by the Local Government, arising from the Local Government's default, breach of contract or violation of agreement terms shall be paid by the Local Government. This agreement shall not be considered as specifying the exclusive remedy for any default, but either party may avail itself of any remedy existing at law or in equity, and all remedies shall be cumulative.

ARTICLE 13. RELATIONSHIP BETWEEN THE PARTIES

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

ARTICLE 14. ASSIGNMENT PROHIBITION

The Local Government is prohibited from assigning any of the rights conferred by this agreement, to any third party without the advance written approval of TxDOT. Any attempted transfer of the rights or obligations of this agreement without TxDOT's consent shall be void and shall be grounds for termination of this agreement.

ARTICLE 15. HOLD HARMLESS

To the extent permitted by law, the Local Government shall indemnify and save harmless TxDOT and its officers and employees from all claims and liability due to its materials or activities of itself, its agents, or employees, performed under this agreement and that are caused by or result from error, omission, or negligent act of the Local Government or of any person employed by the Local Government. The Local Government shall also indemnify and save harmless TxDOT from any and all expense, including but not limited to attorney fees that may be incurred by TxDOT in litigation or otherwise resisting the claim or liabilities that may be imposed on TxDOT as a result of such activities by the Local Government, its agents, or employees. The Local Government's indemnification of TxDOT shall extend for a period of three (3) years beyond the date of termination of this agreement.

ARTICLE 16. GRATUITIES

Any person who is doing business with or who reasonably speaking may do business with TxDOT under this agreement may not make any offer of benefits, gifts, or favors to employees of TxDOT. The only exceptions allowed are ordinary business lunches and items that have received the advanced written approval of TxDOT's executive director.

ARTICLE 17. CONFLICT OF INTEREST

The Local Government shall not assign an employee to activities relating to this agreement if the employee:

- a. owns an interest in or is an officer or employee of a business entity that has or may have a contract with TxDOT relating to this agreement;
- b. has a direct or indirect financial interest in the outcome of this agreement;

- c. has performed services regarding the subject matter of the agreement for an entity that has a direct or indirect financial interest in the outcome of this agreement or that has or may have a contract with TxDOT; or
- d. is a current part-time or full-time employee of TxDOT.

ARTICLE 18. COMPLIANCE WITH LAWS

The Local Government shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and with the orders and decrees of any court or administrative bodies or tribunals in any manner affecting the performance of this agreement. When requested, the Local Government shall furnish TxDOT with satisfactory proof of this compliance. The Local Government shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

ARTICLE 19. INFORMATION EXCHANGE

- A. Each party agrees to meet on, at a minimum, an annual basis for the purpose of reviewing future plans and current status of their respective Fiber Optic Cable and/or Related Infrastructure.
- B. The Local Government shall provide quarterly evaluation reports during the first calendar year of the agreement and annually thereafter detailing how and when the rights and infrastructure granted have been used.
- C. The Local Government shall not disclose information obtained from TxDOT under this agreement without the express written consent of TxDOT.

ARTICLE 20. STATE AUDITOR'S PROVISION

The State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

ARTICLE 21. NOTICES

All notices to either party by the other party required under this agreement shall be delivered personally or sent by U.S. Mail, postage prepaid, addressed to such party at the following respective addresses:

State of Texas:	Texas Department of Transportation ATTN: Director, Maintenance Division 125 East 11 th Street Austin, Texas 78701
Local Government:	City of El Paso 2 Civic Center Plaza El Paso, Texas 79901

~~All notices shall be deemed to be received by the addressee on the date so delivered or so deposited in the mail, unless otherwise provided herein. Either party hereto may change the above address by sending written notice of such change to the other in the manner provided herein.~~

ARTICLE 22. SIGNATORY AUTHORITY

Each signatory warrants that the signatory has the necessary authority to execute this agreement on behalf of the entity represented.

IN TESTIMONY WHEREOF, TxDOT and the Local Government have executed duplicate counterparts of this agreement.

CITY OF EL PASO

By _____ Date _____
 AUTHORIZED SIGNATURE, John F. Cook, Mayor

FOR THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission

By _____ Date _____
Toribio Garza Jr., P.E., Director, Maintenance Division

ATTACHMENT A
LOCAL GOVERNMENT'S RESOLUTION OR ORDINANCE

ATTACHMENT B

DESCRIPTIONS AND SPECIFICATIONS OF RIGHTS GRANTED IN ARTICLE 2

Various locations (Off System) Video Surveillance and Count Stations Project consist of:

1. The Local Government's installation of Closed Circuit Television (CCTV) cameras, Dynamic Message Signs (DMS), permanent count stations and associated communications infrastructure at various locations throughout the City. Work will include the construction of DMS, CCTV and Microwave Vehicle Detection (MVD) at various locations on the City of El Paso's right of way.
2. Integration of field devices into the City's Traffic Management Center network.

Access to various TxDOT facilities is essential to provide the communication from TransVista to the City of El Paso.

TxDOT Facility Locations:

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Cordova Bridge 2. IH 10 & Mesa (SH 20) to Doniphan 3. IH 10 & Mesa (SH 20) to Redd 4. IH 10 at Executive 5. Mesa (SH20) & Doniphan (SH 20) to Sunset 6. Mesa (SH 20) & Executive 7. Resler & Mesa (SH 20) | <ol style="list-style-type: none"> 8. Mesa (SH 20) & Resler to IH10 9. Montana (US62/180) & Airway 10. Redd Rd. & IH10 to Doniphan 11. IH10 & Geronimo 12. IH10 & Hawkins 13. US 54 & Hondo Pass to LP375 14. US 54 & LP 375 to BUS 54 |
|--|---|

PROVISION OF INFRASTRUCTURE	
By TxDOT	By Local Government
<ol style="list-style-type: none"> 1. The Department agrees to allow the connection to the Department's Fiber Optic Cable Related Infrastructure as shown on Attachments C, D & E. 	<ol style="list-style-type: none"> 1. The Fiber Optic Cable Related Infrastructure will be used solely for traffic safety and transportation related purposes. 2. OTN and all communication to city's field equipment will be maintained by the Local Government. 3. The Local Government will submit a Notice of Proposed Installation, TxDOT Form 1082, prior to installing any fiber optic cable in the Fiber Optic Cable Related Infrastructure. 4. In the event of a ITS system technology upgrade the local government will be responsible for the purchase installation and operation of compatible equipment with their own facilities.

NON-MONETARY COMPENSATION	
By TxDOT	By Local Government
<ol style="list-style-type: none"> 1. Waive any monetary fee associated with the use of the dedicated ITS fiber 	<ol style="list-style-type: none"> 1. TxDOT requires a copy of any news, press releases or stories related to TxDOT or those that involve any input from TxDOT employees that are produced or obtained by the Local Government.

ATTACHMENTS C
REQUEST FOR AUTHORIZATION of FIBER OPTIC CABLE CONNECTION

ATTACHMENT D
REQUEST FOR AUTHORIZATION of INFRASTRUCTURE CONNECTION

&
ATTACHMENT E
MAP OF MUTUALLY AGREED-UPON
FIBER OPTIC CABLE and/or RELATED INFRASTRUCTURE
