

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

DEPARTMENT: DEPARTMENT OF INFORMATION TECHNOLOGY
INTRODUCTION AGENDA DATE: NOVEMBER 27, 2012
PUBLIC HEARING AGENDA DATE: DECEMBER 4, 2012
CONTACT PERSON/PHONE: MIGUEL GAMINO, DEPARTMENT OF INFORMATION TECHNOLOGY DIRECTOR, 541-4746
BERTHA ONTIVEROS, LEGAL DEPARTMENT
SENIOR ASSISTANT CITY ATTORNEY, 541-4550
DISTRICT (S) AFFECTED: ALL

SUBJECT:

An ordinance to granting a lease to the University of Texas at El Paso (UTEP) of a single duct in a portion of the City's existing underground conduit system for their fiber optic telecommunications system and related interlocal services for installation of the fiber. An annual lease fee of \$2,764.54 and reimbursement for costs of installing fiber shall be paid to the City.

BACKGROUND / DISCUSSION:

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

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

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD: Miguel Gamino, IT Director

Name

Signature

Date

11/13/2012

ORDINANCE NO. _____

AN ORDINANCE GRANTING A LEASE TO THE UNIVERSITY OF TEXAS AT EL PASO OF A SINGLE DUCT IN A PORTION OF THE CITY'S EXISTING UNDERGROUND CONDUIT SYSTEM ON OREGON STREET BETWEEN GLORY ROAD AND CITY HALL FOR THEIR INTERNAL FIBER OPTIC TELECOMMUNICATIONS SYSTEM AND RELATED INTERLOCAL SERVICES FOR INSTALLATION OF THE FIBER. THE FOLLOWING CONSIDERATION IS TO BE PAID TO THE CITY: ANNUAL LEASE FEE (\$2,764.54) AND REIMBURSEMENT FOR COSTS OF INSTALLING FIBER

WHEREAS, THE UNIVERSITY OF TEXAS AT EL PASO (hereinafter called "Lessee") desires the use of a single duct in certain City of El Paso (hereinafter called "City") underground conduit within public rights-of-way in the City of El Paso (the "Conduit") for the purpose of installing a fiber optic cable for Lessee's internal telecommunications system; and,

WHEREAS, Lessee has also requested that the City through its subcontractor install the fiber optic cable within the Conduit that will belong to Lessee (the "Fiber") at the Lessee's sole cost and expense; and,

WHEREAS, the City is willing to grant this Lease and provide such installation services according to the terms in the attached Interlocal Agreement and Conduit Duct Lease.

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

That the City Manager be authorized to execute the Interlocal Agreement and Conduit Duct Lease, on behalf of the City upon the following terms, to THE UNIVERSITY OF TEXAS AT EL PASO, hereinafter referred to as "Lessee":

1. The Interlocal Agreement and Conduit Duct Lease shall be in a form that is attached and incorporated as Exhibit "A"; and,

2. The Interlocal Agreement and Conduit Duct Lease is to permit Lessee the use of a single duct in that certain Conduit solely for the installation and maintenance of the Fiber for its internal telecommunications system; and,

3. As consideration for the Interlocal Agreement and Conduit Duct Lease, Lessee shall pay to the City the sum set forth in Section 6 of Exhibit "A," subject to the terms and conditions of this ordinance and the Interlocal Agreement and Conduit Duct Lease; and,

4. The Interlocal Agreement and Conduit Duct Lease shall be for a term of twenty (20) years from the date the Lease is executed and may be extended by two (2) additional ten (10) year terms from the expiration date of the initial term as provided in the Interlocal Agreement and Conduit Duct Lease.

PASSED AND APPROVED this ____ day of _____, 2012.

THE CITY OF EL PASO

ATTEST:

Richarda Momsen
City Clerk

John F. Cook
Mayor

APPROVED AS TO FORM:



Bertha A. Ontiveros
Senior Assistant City Attorney



Miguel Gamino Jr., Director
Information Technology Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

**INTERLOCAL AGREEMENT AND
CONDUIT DUCT LEASE**

THIS INTERLOCAL AGREEMENT AND CONDUIT DUCT LEASE (“Agreement”) is made and entered into this ____ day of _____ 2012, by and between the CITY OF EL PASO, Texas, a municipal corporation (hereinafter referred to as “City” or “Lessor”), and THE UNIVERSITY OF TEXAS AT EL PASO, a public institution of higher learning for the State of Texas (hereinafter referred to as “UTEP” or “Lessee”).

WITNESSETH

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

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

WHEREAS, UTEP desires to lease one inner duct within a portion of the City’s Conduit System in the location further described herein to install certain fiber belonging to UTEP (the “UTEP Fiber”) in connection with its fiber optic telecommunications network and to have the City install the UTEP Fiber in the Conduit;

WHEREAS, the parties agree that it is prudent, convenient, efficient and economical and to the mutual benefit of each party for UTEP to use the space and capacity in the City’s existing facilities rather than to install additional facilities;

WHEREAS, the parties agree to pay for the performance of governmental functions and services from current revenues available to that paying party at the date of execution of this Agreement; and

WHEREAS, the City and the UTEP now desire to enter into this Agreement to set forth the duties and responsibilities of the parties.

NOW THEREFORE, in consideration of the mutual contributions described herein and the mutual covenants and undertakings of the parties, the receipt and sufficiency is hereby acknowledged, the City and the County agree as follows:

SECTION 1. SCOPE AND PURPOSE

The parties intend that UTEP and City will be connected via a secondary high-speed circuit established on a point-to-point configuration from the UTEP telecommunications room to a UTEP network router currently installed in the City's telecommunications room. Such secondary high-speed circuit will be done via a 48-strand single mode fiber optic cable to be owned by UTEP ("UTEF Fiber") installed in one of the inner ducts within the City's Conduit along the designated fiber route.

The installation of the UTEP Fiber in the designated inner duct shall be referred to herein as the "Project".

SECTION 2. CONDUIT DUCT LEASE

The City (as Lessor) hereby grants to UTEP (as Lessee), a leasehold interest to install, operate, repair, replace and maintain one inner duct within the Lessor's Conduit ("Leased Duct" as described in Exhibit A, attached hereto and incorporated into this Agreement) to install that certain UTEP Fiber. The Leased Conduit shall be the located in one of the inner ducts of the Conduit as depicted in **Exhibit "A"** to this Lease and shall be clearly marked as the duct that contains the UTEP Fiber. At all times during the Agreement, Lessee shall comply with the City's specifications and requirements concerning installation, maintenance and use of fiber optics, conduit and any ducts. Lessee shall not conduct any activity with the UTEP Fiber that is inconsistent with any applicable state or federal law or regulations.

Subject to the reasonable revisions of the City, the approximate route to be followed by the Conduit as more fully detailed with **Exhibit "B"** (map "Fiber Route"), which is attached hereto and incorporated herein for all purposes, shall be as follows:

The route will originate on the UTEP campus at the corner of Glory Road and Oregon Street, and proceed on a southerly direction to the southeast corner of Yandell Avenue and Oregon Street. The route will then follow an easterly direction to the southwest corner alley between Mesa Street and Stanton Street. The route will then follow a southerly direction on alley to the existing conduit overpass (situated half way between Mesa and Stanton streets) across Interstate 10 to Wyoming Avenue. The route will then follow a westerly direction on Missouri Avenue to the northwest corner of Missouri Avenue and Mesa Street. The route will then follow easterly to the southwest corner of Stanton Street and Missouri Avenue. The route will continue southerly to the northwest corner of Stanton Street and Franklin Avenue. The route then will continue westerly direction to the northeast corner of Santa Fe Street and Franklin Avenue. The route will continue to the southwest corner of Santa Fe Avenue and Franklin Avenue. The route will continue to a ground box located at the southeast El Paso City Hall corner building located at the east parking lot of Civic Plaza 2 (El Paso City Hall). Estimated distance of Fiber Project Path is 3.08 miles (or approximately 16,262 linear feet).

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

SECTION 3. INSTALLATION OF UTEP FIBER

The City agrees that it shall provide, or cause to be provided, both the material and labor (including the 48-strand fiber optic cable) needed to complete the Project. In accordance with any and all applicable procurement requirements, the City shall select a Contractor to complete the installation services required by the Project. The Contractor shall be responsible for providing the services required herein, pursuant to the requirements of **Attachment "C"**. The City shall provide to UTEP a copy of all estimated costs of installing the UTEP Fiber, which costs shall be approved by UTEP. The Project shall be done at UTEP's sole cost and expense and City shall have no responsibility for any cost of the Project.

SECTION 4. MAINTENANCE.

A. UTEP Fiber. Following the completion of the Project, UTEP shall be solely responsible for all services and maintenance and related costs of repairing and maintaining the UTEP Fiber. The City shall grant reasonable access to UTEP to the various Type 1 and Type 2 Ground boxes along the designated Fiber Route for access to the fiber cable upon coordination with the City. Such access will be granted to conduct maintenance or other activities (splicing, etc.) as required. The City shall not be liable for any cost relating to UTEP's access or use of the underground Conduit and the inner ducts (including the Leased Duct) in order to repair or maintain the UTEP Fiber. The City shall not be responsible for any damage to UTEP Fiber due to electrical surges, water damage, excessive heat or any other factors that are beyond the control of the City.

B. City Conduit and Leased Duct. At all times during the construction and following the completion of the construction work to install the Conduit, the City shall be solely responsible for all services and maintenance associated with the Conduit, including the Leased Duct. UTEP shall not be responsible for any damage to Conduit or Leased Duct due to water damage, excessive heat or any other factors of any kind. The parties agree that there shall be no separate cost for the services and maintenance for the Leased Duct and all City's cost for such Conduit services and maintenance (including to the Leased Duct) is included in the payments set forth in Section 6 herein.

C. Payment and Performance Bonds. The parties agree that each will comply with applicable law prior to commencing any work on the Conduit (and all ducts, including the Leased Duct) or UTEP Fiber. Where construction costs are estimated to be \$25,000 or more, the party responsible for the work shall be required to secure payment and performance bonds in the estimated amount of the project and make a copy of such bonds available to the other party upon request.

SECTION 5. TERM AND TERMINATION.

a. Term. The term of this Agreement shall be twenty (20) years from the date the Agreement is fully executed ("Effective Date"), unless terminated earlier as provided herein ("Initial Term"). At the end of the Initial Term, Lessee shall have the option (the "Option") to extend this Agreement for two (2) additional ten (10) year terms ("Option Term"). Lessee shall

notify the City of its intent to exercise its Option in writing to the City no later than sixty (60) days prior to the expiration date of the Initial Term or the Option Term. Should Lessee fail to submit its notice of its intent to exercise its Option, the Lease shall expire by its own terms. At the time of exercising an Option, Lessee must be in good standing with the applicable regulatory authorities and not be in default of any provision of this Agreement.

Should technology advancements require an amendment to the terms and conditions of this Agreement, such revisions may be made via written amendment, executed by both Parties.

B. Termination. It is mutually understood and agreed that either the City or UTEP may terminated this Agreement, in whole or in part for the convenience of either party, upon ninety (90) consecutive calendar days written notice. It is also mutually understood and agreed that upon such notice of termination, if the Contractor is engaged in the provision of labor and services, the City shall immediately notify the contractor to ensure the immediate cessation of all labor and services under this Agreement. In such an event, the Contractor will be paid for those services performed to such date, upon furnishing the City a progress report and an invoice to such date. In no event shall the City be liable for payment of any funds related to the project, other than as explicitly noted herein.

C. Termination for Cancellation of Funds. Should this Agreement be terminated as a result of the cancellation of funds covering this Project, UTEP shall promptly notify the City in writing of such cancellation. The City shall then promptly notify the contractor of the cancellation whereupon the City shall require the contractor to immediately cease and desist from performing any other work or services required by this Agreement. In such an event, the contractor will be paid for those services performed to such date, upon furnishing the City a progress report and an invoice to such date. In no event shall the City be liable for payment of any funds related to the project, other than as explicitly noted herein.

SECTION 6. CONSIDERATION

A. Project (UTEP Fiber). UTEP and the City agree that all costs associated with the installation of the UTEP Fiber in the Leased Duct enumerated herein shall be incurred by UTEP funds currently identified and available to UTEP. The cost of the services requested pursuant to this Agreement is estimated to be FIFTY EIGHT THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$58,500) during the term of this Agreement. The parties acknowledge that compensation for services provided hereunder shall be in accordance with applicable provisions of **EXHIBIT "C"**. UTEP agrees to compensate the City on a project cost basis for the costs of services provided pursuant to this Agreement. At the completion of construction services, the City will submit an invoice to UTEP for the actual amount of the construction services and attach copies of all contractor's invoices. UTEP will reimburse the City for all amounts paid to the contractor to complete the Project as described herein within thirty (30) days following receipt of invoice for payment as provided by state law.

B. Lease Payment. Commencing on the first of the month following completion of construction, UTEP agrees to pay the City for the Leased Duct, an annual rental amount of Seventeen Cents (\$0.17) per linear foot for the 16,262 linear feet of the conduit per year or a total

annual amount of TWO THOUSAND SEVEN HUNDRED SIXTY FOUR AND 54/100 Dollars (\$2,764.54) ("Annual Rent") which represents the fair market value of the Leased Duct under the terms and conditions set forth herein. UTEP shall pay the Annual Rent in annually in advance on or before the 1st day of January commencing on January 1, 2013. Payment by check or wire transfer shall be made payable to the City of El Paso and shall be delivered to the City of El Paso El Paso, Financial Services Department, 2 Civic Center Plaza, El Paso, Texas 79901.

C. The consideration shall be exclusive of and in addition to all of Lessee's costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable City, state or federal ordinances and regulations.

SECTION 7. RESTRICTIONS ON LEASED INTEREST.

A. Texas law prohibits a municipality from offering for sale to the public any telecommunications services. The parties understand that UTEP may use the Leased Duct for its internal, governmental, non-commercial telecommunications purposes and for no other purpose. Except as set forth herein, UTEP may not license, lease, or otherwise permit any third party to use such Leased Duct without the express written approval of the City.

B. Ownership of UTEP Fiber. The UTEP Fiber shall at all times throughout the term of this Agreement and following termination of the Agreement be vested exclusively by UTEP. To the extent any equipment hardware and other non-expendable items are purchased by either entity in connection with the UTEP Fiber, ownership shall be retained by the entity that purchased the equipment for use in the UTEP Fiber or the Project.

C. Ownership of City Conduit. The City Conduit (including the Leased Duct) shall at all times throughout the term of this Agreement and following termination of the Agreement be vested exclusively by the City. To the extent any equipment hardware and other non-expendable items are purchased by either entity in connection with the City Conduit (including the Leased Duct) or the Project, ownership shall be retained by the entity that purchased the equipment for use in the Conduit.

D. Nature of Leasehold Interest in Leased Duct. Nothing herein shall grant any real property interest to Lessee in the Conduit except an exclusive leasehold estate in the Leased Duct for a term of years subject to all of the terms provided herein. Nothing herein contained shall be construed as granting an exclusive use or right to the Lessee in any other portion of the Conduit or any City property, and the City may grant additional leases or rights in any other portion of the Conduit to any other applicant. Except for scheduled preventative maintenance services or in the event of an emergency, Lessee may not make physical entry, replace, splice, relocate or in any way use the Leased Duct or any fiber within the Leased Duct, without first notifying the City's Engineering Department in writing or by electronic mail 48 hours in advance. This notification must include plans in sufficient specificity as determined by the City Engineer and shall be approved by the City Engineer in writing or by electronic e-mail prior to any activity taking place.

SECTION 8. CITY'S USE OF CITY PROPERTY

The City reserves the right to use the surface or subsurface or airspace around and above the Conduit and Leased Duct for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said Conduit or Leased Duct. Further the City expressly reserves the right to install, repair, reconstruct and relocate not only the Conduit or Leased Duct used or occupied by Lessee, but also any streets, alleys, drainage facilities and structures. The City shall give Lessee at least ten (10) days notice in writing prior to relocating the Conduit or Leased Duct containing the Fiber.

The City reserves the right to lay and permit to be laid, utility lines including, but not limited to, storm and sanitary sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the City in, across, along, over or under any City Property occupied by Lessee, and to change any curb or sidewalk or the street grade of any street. The City shall not be liable to Lessee for any damage resulting thereof, nor shall the City be liable to Lessee for any damages arising out of the performance of any work by the City, or its contractors or subcontractors, not willfully and unnecessarily occasioned; provided, however, nothing herein shall relieve any other persons or entities from liability for damage to Lessee's Fiber.

If the City requires Lessee to remove, alter, change, adapt, or conform the Fiber because of changes in the Leased Duct for any reason, Lessee shall make the alterations or changes as soon as practicable when ordered in writing by the Director without claim for reimbursement or damages against the City. Notwithstanding anything contained to the contrary in this Lease, the Lease Fee shall be abated for the time period for which the Lessee does not have use of its communication system. Additionally, the term of the Lease shall be extended equal to the time that Lessee's communication system is inoperable due to the alterations or changes required by the City.

SECTION 9. TERMINATION

A. Right to Cure. If the termination by the City is solely for failure to pay the rent, the City shall give Lessee ten (10) days written notice to cure, unless Lessee has not timely paid the rent more than twice during the immediately preceding 6 month period, in which event there shall be no cure period. If the termination by the City is solely for a non-monetary default, the City shall give Lessee thirty (30) days written notice to cure. If the default is such that it cannot be cured in thirty (30) days despite diligent efforts, Lessee shall not be in default if it commences the cure at the beginning of the thirty-day period and thereafter diligently performs such action as may be necessary to cure such default. In no event shall Lessee have more than ninety days to cure a non-monetary default.

B. Removal or Abandonment of Fiber. Immediately prior to the termination of the lease term at the end of the lease period or any extension thereof Lessee may, at Lessee's option, remove all of its Fiber from the Leased Duct. If Lessee does not remove all of its Fiber from the Leased Duct prior to the termination date any Fiber shall be deemed abandoned and shall become the property of the City free and clear of all liens, regardless of the cause of the termination.

SECTION 10. INDEPENDENT CONTRACTOR

Nothing contained herein shall be construed as creating the relationship of employer and employee between the CITY and UTEP. The parties are independent contractors. Except as may be expressly provided in this Agreement, no partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship. Except to the extent expressly provided in this Agreement, neither of the parties has, and neither of the parties shall attempt to assert, the authority to make commitments for or to bind the other party to any obligation.

SECTION 11. RECORDS

The Lessor and Lessee shall keep complete and accurate maps, construction drawings and specifications describing the location of UTEP Fiber within the City Conduit. The parties shall each have the right, at reasonable times to inspect such maps, construction drawings and specifications.

SECTION 12. NOTICE

Any notice or communication required in the administration of this Lease shall be sent as follows:

City of El Paso
ATTN: City Manager
2 Civic Center Plaza
El Paso, Texas 79901-1196

with copies to:

City of El Paso
ATTN: Director, Information Technology Dept.
2 Civic Center Plaza
El Paso, Texas 79901-1196

City of El Paso
ATTN: Real Estate Services Coordinator
2 Civic Center Plaza
El Paso, Texas 79901-1196

To UTEP:

The University of Texas at El Paso
Attn: President
500 West University Avenue
El Paso, Texas 79968

or to such other addresses as the parties designate from time to time by written notice.

SECTION 13. DESIGNATED POINTS OF CONTACT.

UTEP hereby appoints the Director of the Telecommunication Infrastructure department as UTEP's Point of contact for this Agreement.

The City hereby appoints the City Engineer as City's Point of Contact for the fiber installation. Upon completion of the Project, the City's point of contact shall be the City's Information Technology Department Director for any issues relating to the Conduit or Leased Duct or the Capital Assets Manager for any issues relating to the leasehold operations.

Any formal consent or approval required herein by the City or Lessor regarding assignment, use of Leased Duct or other material terms of this Lease unrelated to day-to-day operations shall be require approval of the City Council and Lessee/UTEP shall not rely on the verbal or informal written communications of City staff.

SECTION 13. ASSIGNMENT

The rights granted by this Lease inure to the sole benefit of Lessee. Lessee shall not sublease or assign all or a portion of the Leased Duct to any third party, without the prior written approval of the Lessor. Any sublease, assignment or transfer of this Lease shall be void unless it is approved by the City Council prior to the assignment.

SECTION 14. RISK ALLOCATION-LIMITATION OF LIABILITY

A. No Indemnification. The parties expressly agree that neither party shall have the right to seek indemnification or contribution from the other party for any losses, costs, expenses, or damages directly or indirectly arising, in whole or part, from this Agreement.

B. Governmental Function for Project. The parties expressly agree that, in all things relating to the Project, the City is performing a governmental function, as defined by the Texas Tort Claims Act. Neither party waives any immunity under the Texas Tort Claims Act. The parties further expressly agree that every act or omission of the City, which in any way pertains to or arises out of this Agreement, falls within the definition of governmental function.

C. Exclusion of Incidental and Consequential Damages. Independent of, servable from, and to be enforced independently of any other enforceable or unenforceable provision of this Agreement, neither party shall be liable to the other party (nor to any person claiming rights derived from such party's rights) for incidental, consequential, special, punitive, or exemplary damages of any kind – including lost profits, loss of business, or other economic damage, and further including injury to property, mental and emotional distress – as a result of breach of any term of this Agreement, regardless of whether the party was advised had other reason to know, or in the fact knew of the possibility thereof.

E. Intentional Risk Allocation. UTEP and the City each acknowledge that the provisions of this Agreement were negotiated to reflect an informed, voluntary allocation between them of all risks (both known and unknown) associated with the transactions associated with this Agreement. The disclaimers and limitations in this Agreement are intended to limit the circumstances of liability. The remedy limitations, and the limitations of liability, are separately intended to limit the forms of relief available to the parties.

SECTION 15. MISCELLANEOUS

A. Remedies. This Lease shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained. In the event the defaulting party fails to cure the breach within the applicable period provided in section 9 above, then the non-defaulting Party may pursue any remedy provided at law or in equity.

B. Force Majeure. In the event any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Lease, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period.

The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

C. Severability. If any provision of this Lease is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof shall not affect any of the other provisions contained herein, provided that any invalid provisions are not deemed by the City or the Lessee to be material to the overall purpose and operation of this Lease. If the City or Lessee determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to terminate this Lease, and if the Lessee has made such determination, the Lessee shall have the option to terminate this Lease. Such judgment or decree shall relieve the City and the Lessee from performance under such invalid provision of this Lease.

D. Entire Agreement. This Lease contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Lease. This Lease may be amended only by written agreement signed by the Parties.

E. Governing Law, Jurisdiction & Venue. This Lease shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Lease is performable in El Paso County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

F. No Third Party Beneficiary. This Lease is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.

G. Waiver. Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Lease shall not be deemed a waiver thereof or of any provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Lease.

H. Incorporation of Exhibits and Other Documents by Reference. All exhibits and other documents attached to or referred to in this Lease are incorporated herein by reference for the purposes set forth in this Lease.

I. Headings. The headings as to contents of particular articles or sections herein are inserted only for convenience, and they are in no way to be construed as a limitation on the scope of the particular articles or sections to which they refer.

J. Ambiguities. In the event of any ambiguity in any of the terms of this Lease, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

K. Representation of Counsel; Mutual Negotiation. Each party has had the opportunity to be represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction, and construction of the parties, at arms' length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

L. Counterparts. It is understood and agreed that this Lease may be executed in any number of counterparts; each shall be deemed an original for all purposes.

M. Authority for Execution. Each Party hereby certifies, represents, and warrants that the execution of this Lease has been duly authorized.

[Signature Pages to follow]

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.

THE CITY OF EL PASO

Joyce Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Bertha A. Ontiveros
Assistant City Attorney

Miguel Gamino
Director Information Technology Dept.

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____ day of _____, 2012,
by Joyce Wilson as City Manager on behalf of the **CITY OF EL PASO**.

Notary Public, State of Texas

My Commission Expires:

ACCEPTANCE

The attached Lease, with all conditions thereof, is hereby accepted this _____ day of _____, 2012.

THE UNIVERSITY OF TEXAS AT
EL PASO

By: _____
Cynthia Viscaino Villa
Vice President for Business Affairs

ACKNOWLEDGEMENT

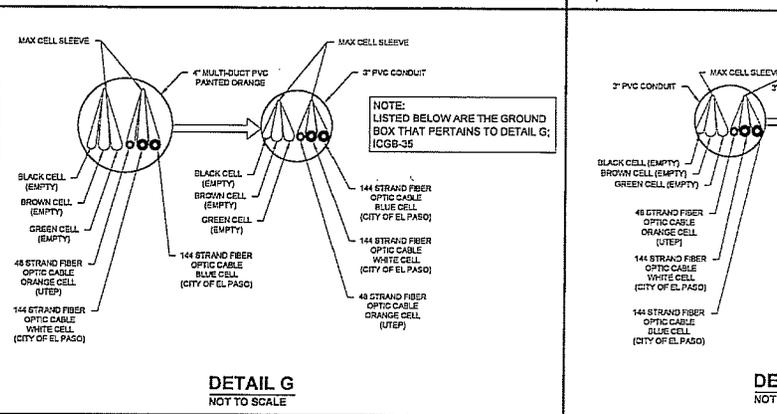
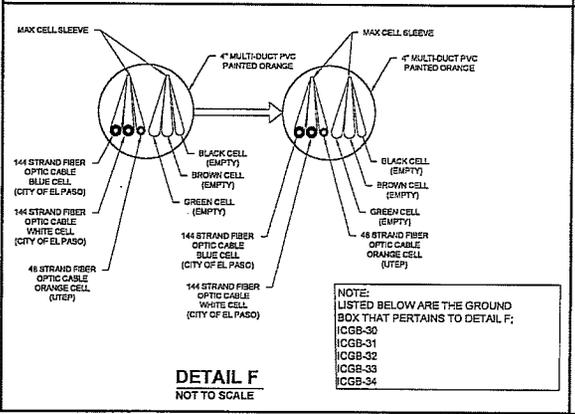
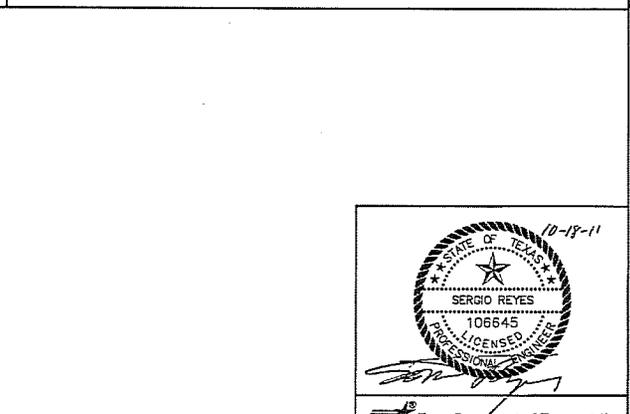
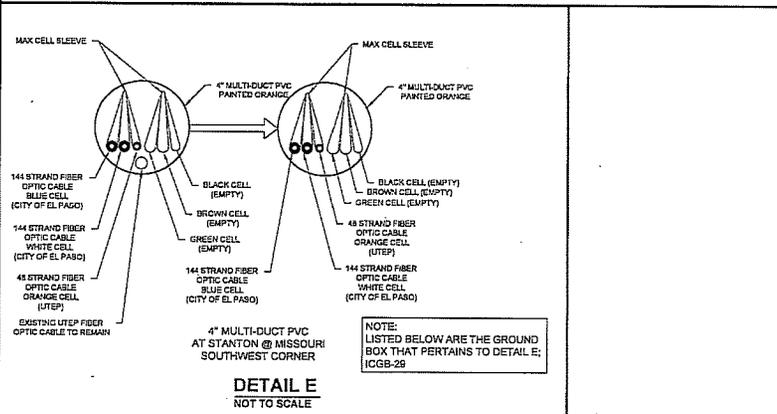
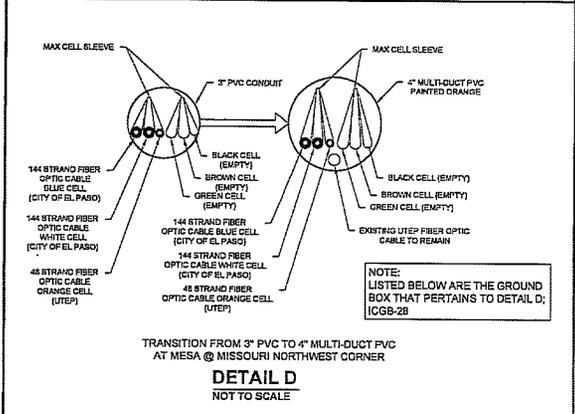
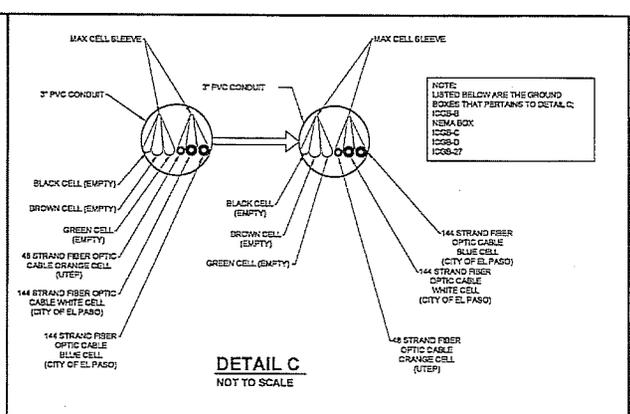
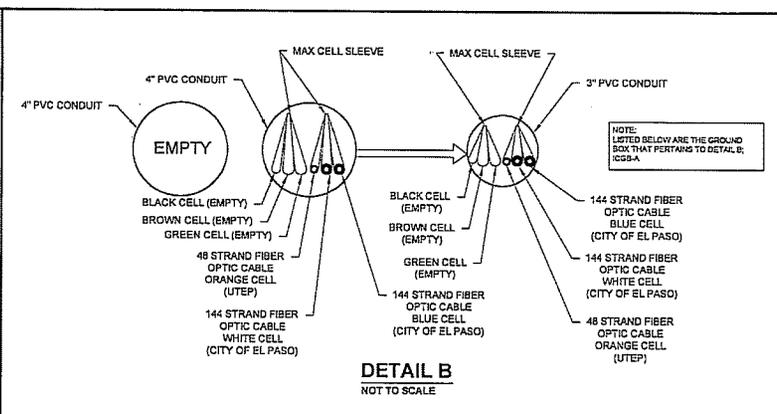
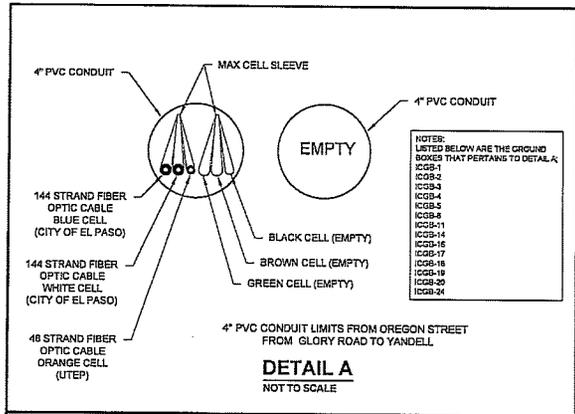
THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____ day of _____, 2012,
by _____ as _____ on behalf of THE
UNIVERSITY OF TEXAS AT EL PASO, a public institution of higher education for the State of
Texas, as Lessee.

Notary Public, State of Texas

My Commission Expires:

EXHIBIT "A"
CONDUIT AND DUCT DETAILS



Texas Department of Transportation
EL PASO DISTRICT

CITY OF EL PASO
DEPARTMENT OF
TRANSPORTATION

OREGON
RECONSTRUCTION

FIBER OPTIC CONDUIT
& CABLE DETAILS

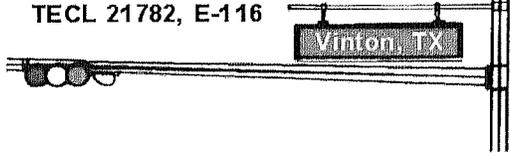
NO. 10	FEDERAL AID PROJECT NO.	SHEET NO.
0	57P 2008 (REV) 888	240
STATE	DIST.	COUNTY
TEXAS	ELP	EL PASO
CONTRACT NO.	SECTION	HIGHWAY NO.
0864	08 313	OR (OREGON STREET)

EXHIBIT "B"
DESIGNATED FIBER ROUTE

EXHIBIT "C"
CONTRACTOR SERVICES AND COSTS

Tri-State
Electric, Ltd.
Heavy Highway
Electrical Utilities

TECL 21782, E-116



530 Valley Chile Road • Vinton, Texas 79821
Phone (915) 755-8803 • Fax (915) 755-7276

Project: Provide and Install 48 Strand Fiber Optic Cable
Location: Glory Road to City Hall Along Oregon
Quoted To: City of El Paso Engineering and Construction
Attention: Mr. Victor Garzon/Mr. Edward Ozogar
Two Civic Center Plaza 4th Floor
El Paso, TX 79901

Date Of Quote: 10/26/12
Quote No.: 9018
Phone: (915) 541-4133
Fax: (915) 541-4441
E-mail: garzonVM@elpasotexas.gov
E-mail: ozogarej@elpasotexas.gov

QUOTATION

Description	Qty.	Unit	Cost	Extension
Fiber Optic Cable (SM)(48Strand)(Dielectric) To Be	18000	LF	\$3.25	\$58,500.00
Installed in Existing Conduit.				\$0.00
				\$0.00
				\$0.00
				\$0.00
We will honor all prices listed above only if all existing				\$0.00
conduits from Yandell and Oregon to City Hall are in good				\$0.00
shape and the proposed fiber optic cable can be				\$0.00
pulled through the conduits. Any conduit repairs will be				\$0.00
charged accordingly.				\$0.00
				\$0.00
				\$58,500.00

Items not included in this proposal:

1. Permits and/or agency fees of any kind.
2. Traffic control drawings or any additional devices not mentioned in the Texas MUTCD.
3. Sealed drawings and/or asbuilt drawings of any kind.
4. Any type of surveying.
5. Splices and/or terminations.

Subtotal	\$58,500.00
Tax	\$0.00
Quote Total	\$58,500.00

NOTE:

1. Testing of fiber optic cables and documentation shall be provided and considered subsidiary to the various bid items.
2. All quantities are estimated, field measurements shall dictate.
3. If any of this work has to be trenched in existing asphalt, we are excluding asphalt in our bid.

Quote Submitted By: 
OPERATIONS DIRECTOR / MANUEL CARREON JR.
Date Submitted: 10/26/2012