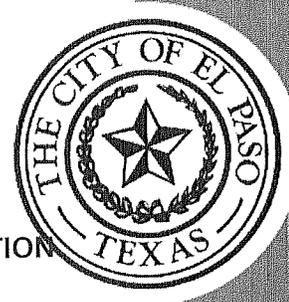


Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS



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

DEPARTMENT: Information Technology

INTRODUCTION DATE: December 6, 2011

PUBLIC HEARING DATE: December 20, 2011

CONTACT PERSON/PHONE: Miguel A. Gamiño, IT Director/ 541-4746
Bertha Ontiveros, City Attorney/ 541-4550

DISTRICT(S) AFFECTED: All

SUBJECT: Discussion and action on the request that Council approve an Ordinance granting a License to Transtelco, Inc. to maintain and use a single conduit innerduct on the Stanton Street International Bridge property for the purpose of installing fiber optic cable for its telecommunications network. That the City Manager be authorized to execute a License Agreement on behalf of the City. The consideration is to be paid to the city for an annual license \$25,526 and annual bridge fee of \$7,068, which fees shall be subject to a 5% annual escalation.

BACKGROUND/DISCUSSION:

Transtelco, Inc. is a Certificated Telecommunications Utility and issued a Service Provider Certificate of Operating Authority under the Public Utility Regulatory Act of Texas. Transtelco desires the use of the Stanton Street International Bridge and related real property used for bridge operations owned by the City of El Paso for the purpose of installing a fiber optic cable for its telecommunications network, connecting the underground conduit owned by Transtelco between the City and Ciudad Juarez solely to transport electronic telecommunications information.

Transtelco and the City have entered into a Memorandum of Agreement concerning Transtelco prior use of the Stanton Street Bridge. The City is willing to grant the license according to the terms in the agreement without waiving any of its rights under applicable law.

The City is to be paid an annual license fee of \$25,526 and an annual bridge fee of \$7,068, as determined by the parties as adequate consideration.

PRIOR COUNCIL ACTION:

No.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson



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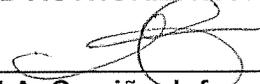
AMOUNT AND SOURCE OF FUNDING:

Department: Information Technology
Amount: \$0
Funds Available: Not applicable
Funds Source: Not applicable

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
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michiel R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Cortney Carlisle Niland

City Manager
Joyce A. Wilson



AN ORDINANCE GRANTING A LICENSE TO TRANSTELCO, INC. TO CONSTRUCT, MAINTAIN AND USE A SINGLE CONDUIT INNERDUCT ON THE STANTON STREET INTERNATIONAL BRIDGE PROPERTY FOR THE PURPOSE OF INSTALLING FIBER OPTIC CABLE FOR ITS TELECOMMUNICATIONS NETWORK; THE FOLLOWING CONSIDERATION IS TO BE PAID TO THE CITY: ANNUAL LICENSE FEE (\$25,526), AND ANNUAL BRIDGE FEE (\$7,068), WHICH FEES SHALL BE SUBJECT TO A 5% ANNUAL ESCALATION

WHEREAS, Transtelco, Inc. (hereinafter called "Licensee") desires the use of the international bridge known as the Stanton Street International Bridge and related real property used for bridge operations (hereinafter called "Stanton Street Bridge") owned by the City of El Paso (hereinafter called "City") for the purpose of installing a fiber optic cable for its telecommunications network, connecting the underground conduit owned by Licensee between the City of El Paso and Ciudad Juarez solely to transport electronic telecommunications information; and,

WHEREAS, Licensee initially proposed to install the fiber optic cable within a single one inch conduit innerduct on the Stanton Street Bridge on or about January 9, 2006 and has constructed and operated the telecommunications facilities that are the subject of this license since that date; and,

WHEREAS, the City and Licensee have entered into a Memorandum of Agreement concerning Licensee's prior use of the Stanton Street Bridge; and

WHEREAS, the City is willing to grant this license according to the terms in the attached agreement without waiving any of its rights under applicable law.

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

That the City Manager be authorized to execute a License Agreement upon the following terms, to Transtelco, Inc., hereinafter called "Licensee":

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

2. The License Agreement is to permit Licensee the construction, maintenance and use of a single one-inch conduit innerduct in a shared duct system on the Stanton Street International Bridge solely for the installation and maintenance of fiber optic cable for its telecommunications business purposes; and,

3. As consideration for the License Agreement, Licensee shall pay to the City the sum set forth in Paragraph Five of Exhibit "A", as the 2012 annual fee, subject to the terms and conditions of this Ordinance and Agreement; and,

4. The License Agreement shall be for a term of seven (7) years from the date the License Agreement is executed and may be extended by three (3) additional five (5) year terms from the expiration date of the initial term as provided in the License Agreement.

PASSED AND APPROVED this _____ day of _____, 2011.

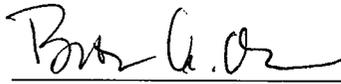
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



Said Larbi-Cherif, Director
International Bridges

CITY CLERK DEPT.
2011 NOV 29 AM 8:30

EXHIBIT "A"

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (hereinafter called "*Agreement*") is made and entered into this ____ day of _____ 2011, by and between the CITY OF EL PASO, Texas, a Municipal Corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "*City*"), and TRANSTELCO, INC. (hereinafter called "*Licensee*").

WITNESSETH

WHEREAS, Licensee initially proposed to install fiber optic conduit within a single conduit innerduct on the Stanton Street Bridge on or about January 9, 2006 and has constructed and operated the telecommunications facilities that are the subject of this license since that date; and,

WHEREAS, the City and Licensee have entered into a Memorandum of Agreement concerning Licensee's prior use of the Stanton Street Bridge; and

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

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

SECTION 1. SCOPE AND PURPOSE

The City acknowledges that prior to the execution of this Agreement, the Licensee has repaired, refurbished and innerducted an existing City-owned four-inch (4") top left conduit facing South on the Stanton Street Bridge (the "*Conduit*"). The Licensee has also installed three (3) innerducts in the Conduit from the existing pull box at the Northeast intersection of Eighth Street and Stanton, to the pull box in the parking lot in front of the Bridge office, to the manhole directly south of the vehicular canopy, to the manhole directly north of the Bridge abutment at the base of the Stanton Street Bridge (as defined below), to the International Boundary Line (the "*City Improvements*") using three (3) corrugated 1-inch diameter ducts in accordance with the manufacturers' instructions and recommendations.

The City hereby grants to Licensee, a non-exclusive license (hereinafter referred to as “*Agreement*”) to install, use, operate, repair, replace and maintain across and along a portion of the City-owned Stanton Street International Bridge, bridge administration building, bridge approach, one (1) of the three installed innerducts in the Conduit, and all other City-owned related real property (hereinafter referred to as “*Stanton Street Bridge*” or “*City Property*”) all necessary or desirable wires, cables, junction boxes, communication vaults or other structures or appurtenances necessary, in connection with a fiber optic telecommunications network, to provide fiber optic telecommunications service, between the City of El Paso and Cd. Juarez including, but not limited to, a single one-inch conduit innerduct in a shared duct system, and an on-site connection with the Licensee’s fiber hereinafter collectively referred to as the “*Infrastructure*”. This Agreement shall not permit or be construed to permit any other private use of the City Property, which impairs its function as an international bridge, or the right-of-way, bridge management or any other use that otherwise interferes with the City’s use of the City Property. Other than maintenance or repair, Licensee shall not install or construct any additional improvements or make any additions or alterations on, below or over the City Property following the City’s execution of this Agreement (“*Additional Improvements*”), without the prior written consent of the City. Nothing herein shall grant any real property interest to Licensee except as provided herein.

The Licensee’s use of any public right-of-way within the City of El Paso permitted under state law shall not be subject to this Agreement.

All parties acknowledge that this license is not a franchise pursuant to Texas law nor is it a permit to string or bury telecommunications lines in the public right of way. Any such franchise or permit shall be obtained separately from the appropriate local or state authority.

SECTION 2. REGULATION OF CONSTRUCTION

A. Prior to the City’s execution of this Agreement, Licensee has submitted to the Director for review and approval, and the City has approved, the plans for the Infrastructure and City Improvements.

B. Licensee shall notify the Director, and, if necessary, the Chief Traffic Engineer of the Department of Engineering a minimum of forty-eight (48) hours in advance prior to the commencement of any construction of Additional Improvements by the Licensee, their

contractor or representative. All construction shall be in conformance with City codes and applicable local, state and federal laws and regulations. Licensee is responsible for the workmanship and any damages by a contractor or subcontractor, regardless if the contractor or subcontractor is an independent contractor. A responsible representative of the Licensee will be available at all times during construction.

The work completed by Licensee in placing, replacing, repairing, or maintaining the Infrastructure (including Additional Improvements) shall be performed in accordance with all applicable laws, rules and regulations (“*Laws*”) of the City, State of Texas, and the United States government and since the Infrastructure will interconnect at mid-bridge structure, with Mexican local, state and federal Laws, as applicable. Licensee’s work shall be performed in a manner that does not unreasonably inconvenience the City’s or the public’s use of City Property. Licensee shall make every effort to minimize the impact to the City Property and shall follow the reasonable direction of the Director to ensure the impact is minimized. The Director shall have the right to order all work to cease immediately if he reasonably believes that the work constitutes a danger to the public, City-owned property or City operations. The City shall not be subject to any damages incurred because of such stoppage.

In the event that Licensee desires to reconstruct, repair, maintain, or replace any Infrastructure and such work will involve excavation or any surface disturbance, Licensee shall provide written notice and submit the plans and specifications that pertain to the rebuilding or repairs of the Infrastructure fourteen (14) days in advance of commencing such work to the Director for approval. Approval of such plans will not be unreasonably delayed, withheld, or denied. In the event that emergency repairs are necessary, Licensee shall immediately notify the Director in writing prior to commencing such work. If Licensee is unable to notify the Director prior to the commencement of work due to emergency conditions, Licensee shall notify the City no later than twenty-four (24) hours after the work is commenced (at such emergency numbers that City shall provide from time to time) and such notice will include details of the repair work and a copy of any revised plans.

Upon approval of the Plans for Additional Improvements, the Director will issue a Notice to Proceed for the construction.

The City shall have the power at any time to order and require Licensee to remove and abate all or any portion of the Infrastructure (including Additional Improvements) that is

dangerous to life or property. Should Licensee, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate same, at the expense of Licensee, all without compensation or liability for damages to Licensee. Work done in connection with the construction, repair and maintenance of such Infrastructure is subject to the continuing police power of the City.

C. After installation of any Additional Improvements, Licensee shall restore all City Property to a condition that is substantially the same or better as existed prior to Licensee's disturbance of the area pursuant to applicable City requirements and to the reasonable satisfaction of the Director. Restoration must be made in accordance with the approved construction schedule to the reasonable satisfaction of the Director or his/her designee. If restoration is not satisfactory and not performed in a timely manner, all work in progress, except the pending restoration work, will be halted until all restoration is complete. Licensee shall submit to the City a set of AS BUILT plans of any Additional Improvements containing the information reasonably required by the City.

SECTION 3. TERM

The term of this Agreement shall be seven (7) years beginning the date this Agreement is executed ("*Effective Date*"), unless terminated earlier as provided herein ("*Initial Term*"). At the end of the Initial Term, Licensee shall have the option ("*Option*") to extend this Agreement for three (3) additional five (5) year terms (each an "Option Term"). Licensee shall notify the City of its intent to exercise its Option in writing to the City no later than ninety (90) days prior to the expiration date of the Initial Term or the Applicable Option Term. Should Licensee fail to submit its notice of its intent to exercise its Option, the Agreement shall expire by its own terms.

SECTION 4. CITY'S USE OF CITY PROPERTY

Nothing herein contained shall be construed as granting an exclusive use or right to the Licensee to the City Property, and the City may grant an additional license or other interest to any other applicant in its discretion for the same City Property described herein; provided however, that such additional grant of use does not interfere with the Licensee's use of the City Property. The City reserves the right to use the surface or subsurface or airspace above the City Property covered by this Agreement 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 City Property. Further the City expressly reserves the right to install, repair, or reconstruct the City Property used or occupied by Licensee; provided however, that such work will not interfere with Licensee's use of the City Property.

The City reserves the right, subject to further conditions described in this Section, 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 Licensee. The City shall not be liable to Licensee for any damage resulting thereof, nor shall the City be liable to Licensee 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 Licensee's Infrastructure.

If the City requires Licensee to remove, alter, change, adapt, or conform its Infrastructure because of changes in the grade of the City Property or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground structure or any other infrastructure to be owned by the City, Licensee 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 Agreement, the Total Fee (as defined below in Section 5) shall be abated for the time period for which the Licensee does not have use of its communication system. Additionally, the term of the Agreement shall be extended equal to the time that Licensee's communication system is inoperable due to the alterations or changes required by the City.

Immediately following the completion of the City Improvements, the City shall have sole access, control and ownership of the remaining two (2) empty inner ducts for City's exclusive use or disposition.

SECTION 5. CONSIDERATION

A. Annual Fee: As consideration for this Agreement, for the year 2011 the combined annual license fee and bridge fee was \$32,594. Beginning on January 1, 2012 Licensee shall pay

to the City an annual fee in the sum of **Twenty Six Thousand Eight Hundred Two and No/100 Dollars (\$26,802.00)** (“*Annual Fee*”) for the 2012 year. No later than January 1st of each year the Licensee shall remit the Annual Fee to the City in full. In addition, beginning on January 1, 2012 the Licensee shall also pay an annual Bridge License Fee based on 923 lineal feet for an additional amount of \$7,421.

The Annual Fee and Additional Bridge Fee are collectively referred to herein as the “*Total Fee*”.

B. The Licensee shall also pay to the City a Security Deposit in the amount of Two Thousand Five Hundred and No/100 (\$2,500.00) to secure the performance of the Licensee under this Agreement.

C. Failure to timely remit payment of the Total Fee as provided in this Section is an event of monetary default and shall be cause for termination after the following notice. Licensee’s failure to make the payment of the Total Fee within seven days (7) after the payment is due shall constitute a late payment and in order to cure the default Licensee shall pay the City a late charge of ten percent (10%) in addition to the late payment. After the City provides written notice of default Licensee shall have seven (7) days to cure such default. If Licensee fails to cure such default within seven (7) days from delivery of the notice to Licensee pursuant to Section 11 below, the City may terminate this Agreement and retain the Security Deposit as liquidated damages. In the event that Licensee is in default of this Agreement for failing to timely pay the Total Fee three (3) times within the Initial Term or three (3) times within any Option Term, the City may at its sole option terminate this Agreement and Licensee shall have no right to cure the default.

D. The Total Fee is subject to escalation of five percent (5%) on January 1st of each year (“*License Year*”) beginning January 1, 2013.

E. In addition to the Total Fee, Licensee shall pay all general municipal taxes of whatever nature, including, but not limited to, the ad valorem taxes and special taxes and assessments for private improvements except as hereinafter provided as may be enacted during the term of this Agreement or any extension.

F. The Total Fee shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable City, state or federal ordinances and regulations.

G. In the event the Licensee continues use of the Infrastructure after the expiration or termination of this Agreement so that the fiber has not gone dark, the amount of the Total Fee due and payable to the City shall be double and paid monthly until Licensee ceases all use of the Infrastructure, or another agreement is executed.

SECTION 6. INDEMNIFICATION AND INSURANCE

LICENSEE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES FROM ANY AND ALL CLAIMS, LOSS, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF ANY KIND OR CHARACTER, INCLUDING ALL EXPENSES OF LITIGATION FOR INJURY OR DEATH TO ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH LICENSEE, LICENSEE'S AGENTS, SERVANTS OR EMPLOYEES OR ANY ORGANIZATIONS USE OF THE CITY PROPERTY, REGARDLESS OF WHETHER SUCH INJURIES, DEATH, OR DAMAGES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OF THE CITY.

Prior to the approval of this Agreement by City Council, Licensee shall provide the City with a certificate of liability insurance and shall maintain such insurance in effect during the term of this Agreement in the amount of one million dollars (\$1,000,000.00) primary coverage with a five million dollar (\$5,000,000.00) umbrella policy. These amounts are not a limitation upon Licensee's agreement to indemnify and hold the City harmless.

Licensee shall procure said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide in substance that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and the licensee, its agents, servants or employees. The coverage must be on an "occurrence" basis and must include coverage for personal injury, contractual liability, premises liability, medical damages, underground, and explosion and collapse hazards. Each policy must include a cancellation provision in which the insurance company is required to notify the City in writing not fewer than thirty (30) days before canceling, failing to renew, or reducing policy limits. The certificate shall state the policy number; name of insurance company; name and address of the agent or

authorized representative of the insurance company; name, address and telephone number of insured; policy expiration date; and specific coverage amounts.

All policies shall name the City of El Paso, its officers, agents, servants and employees as an additional insured. Licensee shall file an original of the policy or certificate of insurance with the City Clerk and the Capital Assets Management Division. The policy shall contain a provision that the policy will not be terminated without providing the City with thirty (30) days prior written notice of termination.

In the event that Licensee undertakes any construction work for Additional Improvements that exceeds \$25,000 in materials and labor, Licensee shall file a payment and performance bond in the estimated cost of the work with an effective date prior to the commencement of construction of Additional Improvements for a period of thirty (30) days after the City's final inspection and approval of the work. Such bond shall guarantee the restoration of the City Property in accordance with this Agreement. The surety shall be authorized to do business in the State of Texas. Contractor agrees that it may not split a single project into several contracts for the purpose of circumventing this requirement and state law.

SECTION 7. EARLY TERMINATION OR EXPIRATION

The City shall have the right to terminate this Agreement due to requirements by the Federal Government outside of the City's control, provided however, in this event the City will reimburse Licensee the prorated amount of the Total Fee paid to the City. In addition, commencing in the year 2014, either party shall have the option to terminate this Agreement effective as of the end of the calendar year upon giving the other party written notice of termination at least six (6) months in advance of such termination, and there shall be no proration or refund of the Total Fee paid for the year of termination.

Upon early termination or expiration of this Agreement, Licensee shall no longer use the Infrastructure together with any improvements thereto, made or erected during the term of this Agreement located within the City Property and such property shall become the property of the City with no encumbrances of any sort. Grantee shall provide and transfer any proof of title and ownership reflecting same, regardless of the cause of the termination. The Infrastructure shall not be encumbered by any lien or other security interest when transferred to City. In the City's discretion, the Director may require the removal of such Infrastructure from said City Property

and restoration of all pavement or base, damaged or removed during this Agreement, as determined by the City, at Licensee's own cost and expense. Any such restoration shall be subject to the reasonable approval of the Director.

SECTION 8. NONMONETARY EVENTS OF DEFAULT

A. A default by Licensee of any material provision or requirement contained in this Agreement other than the requirement that Licensee timely pay the Total Fee constitutes a non-monetary default. The City shall give Licensee thirty (30) days written notice to cure any nonmonetary default. If the default is such that it cannot be cured in thirty (30) days, Licensee shall not be deemed in default provided that Licensee has commenced and is diligently pursuing the cure. The time for curing the default shall be extended for such period of time as is reasonably necessary to complete the cure.

B. Subject to the notice and cure provisions in A above, it shall constitute a nonmonetary default under this License if Licensee:

1. Files in any court a petition in bankruptcy or insolvency or for the appointment of a receiver or trustee of all or a portion of Licensee's property;
2. Makes any general assignment for the benefit of creditors;
3. Is adjudged a bankrupt in involuntary bankruptcy proceedings that are not dismissed or vacated within sixty (60) days; or
4. Is made a party to any receivership proceeding in which a receiver is appointed for the property or affairs of Licensee where such receivership is not vacated within sixty (60) days after the appointment of such receiver.
5. Violates any local, state, or federal laws, rules or regulations that relate to the performance of this License.
6. Fails to be in good standing with the applicable regulatory authorities.

C. Failure of City to declare this License canceled upon the default of Licensee for any of the reasons set out shall not operate to bar or destroy the right of City to cancel this License by reason of any subsequent violation of the terms of this License.

D. No receipt or acceptance of money by City from Licensee after the expiration or cancellation of this License, after the commencement of any suit, or after final judgment for possession of the Infrastructure, shall reinstate, continue, or extend the terms of this License, or

affect any such notice, demand or suit or imply consent for any action for which City's consent is required or operate as a waiver of any right of the City to retake and resume possession of the Infrastructure.

E. Failure of Licensee to cure a monetary or non-monetary default within the cure period in any other agreement that Licensee has with the City shall be an event of default under this Agreement, provided that the City shall simultaneously give written notice to Licensee of the City's intention to assert the cross-default, with specific reference to this Agreement, in the notice of default sent by the City under such other agreements. Furthermore, a non-monetary default in any other agreement that Licensee has with the City shall not trigger a default under this Agreement so long as the following occurs: (i) prior to the expiration of the cure period of the applicable agreement Licensee gives the City written notice of the factual basis for its position that a non-monetary default in the applicable agreement did not occur, has been adequately cured or that Licensee was not responsible to cure the default under the terms of the applicable agreement; (ii) within 30 days from any City written response that the City disagrees with Licensee's position Licensee submits the dispute to mediation before a mutually-agreed upon mediator and diligently pursues a mediated resolution of the dispute; and (iii) thereafter, the mediator determines that a default did not occur, any default has been cured, or that the default was not the responsibility of the Licensee under the terms of the applicable agreement.

SECTION 9. RECORDS

The Director shall be kept fully informed by Licensee as to matters pertaining in any way to Licensee's exercise of its rights under this Agreement, including the installation of any Additional Improvements, and the replacement, maintenance and repair of the Infrastructure on the City Property. Licensee shall keep complete and accurate maps, construction drawings and specifications describing the location of Infrastructure within the City Property. The City shall have the right, at reasonable times to inspect such maps, construction drawings and specifications.

SECTION 10. NOTICE

Any notice or communication required in the administration of this Agreement 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: International Bridges Director
791 S. Zaragoza Road
El Paso, Texas 79907

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

and: Transtelco, Inc.
Attn: Miguel Fernandez, President
500 W. Overland, Suite 110
El Paso, Texas 79901-1196

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

SECTION 11. ASSIGNMENT

A. The rights granted by this Agreement inure to the benefit of Licensee, and any parent, subsidiary, or successor entity now or hereafter existing. The rights shall not be assigned without the express written consent of the El Paso City Council, which consent shall not be unreasonably delayed or withheld. A written copy of any such assignment must be filed with the City. Any required consent shall be evidenced in writing by the City Manager that fully recites the terms and conditions, if any, upon which consent is given.

B. If any such Transferee(s) shall obtain possession and use of all or any part of the Infrastructure (the "*Affected Portion*"), then, so long as all of the obligations of Licensee under this Agreement with respect to the Affected Portion are being performed, (i) such Transferee(s) shall agree to be bound by and to observe and perform the obligations of Licensee under this Agreement with respect to the Affected Portion and (ii) City shall not disturb the possession or use of the Affected Portion by such Transferee(s) and shall recognize such Transferee(s)'s right to possession and use thereof, subject, nevertheless, to the terms of this Agreement and the respective rights of the parties herein.

**SECTION 12. LEASE, SALE OR DEDICATION OF OR SECURITY INTEREST
OR LIENS UPON INFRASTRUCTURE**

Licensee, without the consent of the El Paso City Council, shall not lease, license, sublicense, sell or dedicate or in any manner permit the use of all or a portion of the Infrastructure, to any non-Licensee person or entity. Notwithstanding the foregoing, Licensee shall be allowed to provide services to its customers through Licensee's fiber optic cable installed within Infrastructure. Licensee shall not allow the placement of any additional cable without the written consent of the Director.

Licensee has no legal right to grant a third party creditor any security interest in the Conduit. In the event that Licensee intends to grant a third party creditor a security interest in Licensee's fiber located within the Conduit, Licensee shall ensure that the security interest in the fiber is subject to all of the terms and conditions of this Agreement. Licensee shall promptly provide the City evidence of the name of any third party creditor.

SECTION 13. LICENSEE'S ACCESS AND SECURITY

Licensee shall have twenty-four (24) hour access to the Infrastructure for purposes of maintenance and repair, subject to any Federal requirements or regulations. The City may coordinate with the Licensee and designate specific access points and establish the times of access, with at least one point having twenty-four hour access. The City agrees that access shall not be provided to any third party to the Infrastructure without providing seventy-two (72) hours advance notice to Licensee. City shall have the right to supervise the Licensee's and any third party's access to the Infrastructure for security purposes.

SECTION 14. MISCELLANEOUS

A. Remedies: This Agreement 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.

B. City's Default: In the event the City commits a breach of this Agreement, prior to bringing suit or pursuing any other remedy Licensee shall provide written notice of such breach to the City. Following receipt of such notice, the City shall have thirty (30) days within which to

cure the breach. If the breach cannot be cured within such thirty (30) day period, the City shall commence to cure such breach within said period and thereafter diligently perform such action as may be reasonably necessary to cure such breach.

C. 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 Agreement, 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, lightning, 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 inability of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

D. Severability: If any provision of this Agreement 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 Licensee to be material to the overall purpose and operation of this Agreement. If the City or Licensee determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to terminate this Agreement. If the Licensee has made such determination, the Licensee shall have the option to terminate this Agreement. Such judgment or decree shall relieve the City and the Licensee from performance under such invalid provision of this Agreement.

E. Entire Agreement: This Agreement 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 Agreement. This Agreement may be amended only by written agreement signed by the Parties.

F. Governing Law, Jurisdiction & Venue: This Agreement 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 Agreement 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.

G. No Third Party Beneficiary: This Agreement 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.

H. Waiver: Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement 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 Agreement.

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

J. 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.

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

L. Counterparts: It is understood and agreed that this Agreement 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 Agreement has been duly authorized.

N. Administration: The International Bridges Director is the principal City official responsible for the administration of this Agreement and Licensee recognizes that questions regarding the interpretation or application of this Agreement shall be referred to the Director or his designee.

THE CITY OF EL PASO

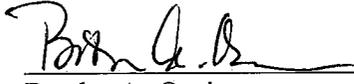
Joyce Wilson
City Manager

ATTEST:

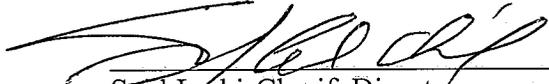
Richarda Momsen
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Bertha A. Ontiveros
Assistant City Attorney



Said Larbi-Cherif, Director
International Bridges

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____ day of _____, 2011,
by Joyce Wilson as City Manager on behalf of the **CITY OF EL PASO.**

Notary Public, State of Texas

Notary's Printed or Typed Name:

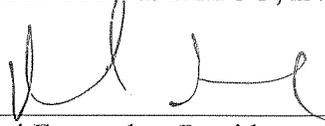
My Commission Expires:

**CITY CLERK DEPT.
2011 NOV 29 AM 8:30**

ACCEPTANCE

The attached Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2011.

LICENSEE: TRANSTELCO, INC.

By: 
Miguel Fernandez, President

ACKNOWLEDGEMENT

THE STATE OF TEXAS)

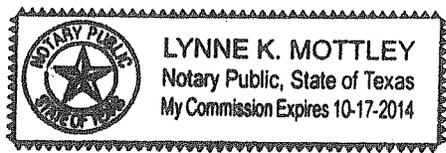
COUNTY OF EL PASO)

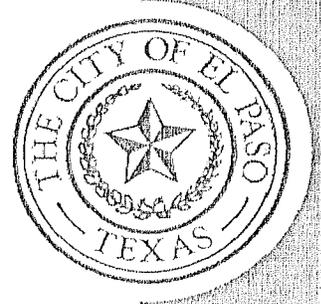
This instrument is acknowledged before me on this 21st day of November, 2011, by Miguel Fernandez as President on behalf of TRANSTELCO, INC., as Licensee.


Notary Public, State of Texas

Lynne K. MOTTLEY
Notary's Printed or Typed Name:

10-17-2014
My Commission Expires:





MEMORANDUM

TO: Mayor and City Council

FROM: Bertha A. Ontiveros *BAO*
Assistant City Attorney

SUBJECT: Transtelco, Inc.

DATE: November 28, 2011

Attached is a memorandum from Risher Gilbert, our outside counsel, explaining the transaction documents negotiated with Transtelco Inc. for fiber optic backbone and projects in the downtown area.

cc: Joyce A. Wilson
City Manager

District 1
Jim F. Cook

City Council

District 2
Ann Morgan Billy

District 2
Susannah Dwyer

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Dr. Michael R. Noe

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Corney Carlisle Niles

City Manager
Joyce A. Wilson

OFFICE OF THE CITY ATTORNEY

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11-1040-004/PL#92096/MEMO TO COUNCIL/BAO



THE GILBERT LAW FIRM
A PROFESSIONAL CORPORATION

201 E. Main Dr., Suite 1501
P.O. Box 472
El Paso, Texas 79943-0472
Phone: (915) 532-6622
Fax: (915) 541-6490

Memo

To: City Council
From: Risher S. Gilbert
Date: November 28, 2011
Re: Transtelco-Executive Summary of Documents

City Council Agenda Items. On December 6, 2011 two Ordinances related to the fiber optic company Transtelco, Inc. will be introduced on the Council agenda. On December 13, 2011 the public hearing on these items will take place and Council will be asked to vote on them as well as on five other documents discussed below.

Overview. The City has been doing business with Transtelco, Inc. in some capacity for at least five years. Transtelco is both a lessee of City property and a lessor to the City of Transtelco property. Transtelco also maintains the primary fiber backbone of the City. The following described seven documents serve to bring Transtelco current on its lease fees to the City and clarify, clean up and strengthen what were sometimes informal or vague terms of the City's agreements with Transtelco.

Conduit Lease. This is a new document that memorializes the unwritten lease terms between the City as lessor and Transtelco as lessee of approximately 10,285 lineal feet of the City's downtown conduit, part of which has been leased since 2006. The Lease has a new 5 year term with 3 additional 5 year options. The annual lease payment is \$12,524.70 which will increase by 5% each year starting in 2012. If Council approves this Lease it must be by Ordinance that will be introduced on December 6, 2011.

Memorandum of Conduit Lease. This is a new document that will be recorded in the Real Property records to give third parties notice of the Conduit Lease described above.

Stanton International Bridge License Agreement. Since 2006 Transtelco has used a City conduit for its fiber to cross the Stanton International Bridge. This new agreement sets forth the terms for the License. The bridge fees increase annually by 5% and for 2012 will be \$34,233. This License Agreement includes language that an uncured default in any other agreement that Transtelco has with the City will constitute a default in this License. After 2014 either party may terminate the License upon 6 months notice. If Council approves this License it must be by Ordinance that will be introduced on December 6, 2011.

Memorandum of Agreement. This is a new document that summarizes the settlement between the parties and recites the computation of the \$193,980.42 amount that Transtelco owes for past fees through the end of November 2011. One-fourth of the fees will be paid when the Agreement is approved; the remainder will accrue interest at 2.5% and will be paid in three payments over the next 12 months.

Amendment to Fiber Lease Agreement. This is a new amendment to the existing Fiber Lease between the City and Transtelco dated December 18, 2007, by which the City leases 144 fiber optic strands within approximately 25.5 miles of Transtelco conduit. The initial 10 year term has been extended to restart in December of 2011 and the City has two additional 10 year terms it can exercise. This amendment clarifies that all rental has been prepaid so that the City owes nothing further for the entire term of the Lease. It also clarifies that Transtelco must keep current any creditor with a lien on the conduit and a failure to do so will be a default unless the creditor executes a non-disturbance agreement in favor of the City so that the City's Lease will continue regardless of any foreclosure of the conduit.

Memorandum of Fiber Lease. This is a new document that will be recorded in the Real Property records to give third parties notice of the existing Fiber Lease and its basic terms. This is to give legal notice of the City's leasehold interest in the fiber to any subsequent creditors or customers of Transtelco.

Amended Maintenance Agreement. This Amendment is to the existing Maintenance Agreement that the City has had with Transtelco since December of 2007, whereby Transtelco performs routine maintenance on the 144 fiber optic strands of the City for a set monthly fee of approximately \$5,370 computed at \$0.04 per lineal foot times the almost 25.5 miles of Transtelco conduit. Unscheduled maintenance will be billed at cost plus an overhead factor of 25% with proportional sharing of this cost by any other beneficiaries of the work. The Amendment incorporates stronger and more current industry procedures and standards for maintenance. It extends the term of the Agreement by starting with a new 10 year term, but allows either party to terminate within 90 days written notice.

Conclusion. It has taken approximately 24 months to negotiate, research and resolve the technical and complex terms of these documents. Although the City has given up and/or compromised on several points, it has gained much more than it has given up, and will be benefited by these agreements. If you would like more details about the agreements or have any questions please contact Bertha Ontiveros in the City Attorney's office for her to schedule a briefing with you.