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

DEPARTMENT:	INFORMATION TECHNOLOGY
AGENDA DATE:	December 20, 2011
CONTACT PERSON/PHONE:	Miguel Gamino, Information Technology Director, (915) 541-4746
DISTRICT (S) AFFECTED:	ALL

SUBJECT:

To:	Transtelco Inc.
Estimated Receipt:	$ 193,980.42
Total Estimated Receipt:	$ 193,980.42

BACKGROUND / DISCUSSION:

The Information Technology Department is requesting that Council authorize the City Manager to execute the Memorandum of Agreement between Transtelco, Inc. and the City of El Paso to reflect that they will enter into the License Agreement and the Conduit Lease. Transtelco will pay all amounts it owes to the City under the terms of payment specified in the agreement. The Agreement clarifies certain rights and obligations of the parties in the Fiber Lease and Maintenance Agreement.

Additionally this Agreement 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 and the remainder will accrue interest at 2.5% and will be paid in three payments over the next twelve (12) months.

In January 2006, Transtelco performed certain repairs to the Stanton Street International Bridge (the Bridge) and installed Transtelco's fiber across the Bridge. Transtelco desires to enter into a License Agreement with the City to document the installation and use. Transtelco also desires to pay all amounts owed for Transtelco's past use of the Bridge. On December 6, 2011, an Ordinance was introduced on the City Council agenda as items 4C "Regular Agenda-Introductions" related to the Stanton International Bridge License Agreement. This same ordinance is presented on this, December 20, 2011, City Council agenda requesting the Council to authorize the City Manager to execute the License Agreement.

In 2006 and 2009 Transtelco installed certain underground conduits in the downtown area for the City and installed Transtelco's fiber in the City Conduits. Transtelco desires to enter into a Conduit Lease with the City in order to document this installation and use the (Conduit Lease) and pay all amounts owed for Transtelco' s past use of the City Conduits . On December 6, 2011, an Ordinance was introduced on the City Council agenda as item 4B "Regular Agenda-Introductions" related to the Conduit Lease. This same ordinance is presented on this, December 20, 2011, City Council agenda requesting the Council to authorize the City Manager to execute the Lease Agreement

Transtelco and the City entered into a Fiber Lease Agreement in December 18, 2007 by which the City leased 144 fiber optic strands for high-speed connectivity located in an underground conduit approximately 26 miles in length.

In December 18, 2007, Transtelco and the City entered into a Maintenance Agreement which Transtelco agreed to maintain the City Fiber in the Transtelco Conduit.

PRIOR COUNCIL ACTION:

On December 6, 2011, Ordinances were introduced on the City Council agenda as items 4B and 4C "Regular Agenda-Introductions" related to the Conduit Lease and Stanton International Bridge License Agreement. These same ordinances are presented on this, December 20, 2011, City Council

agenda requesting the Council to authorize the City Manager to execute the Lease Agreement and the License Agreement.

AMOUNT AND SOURCE OF FUNDING:

Department:	Information Technology
Amount:	$193,980.42
Funds Available:	Revenue Source
Funds Source:	Revenue Source

BOARD / COMMISSION ACTION: N/A

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

DEPARTMENT HEAD: **Miguel Gamino** _____ December 14, 2011

Name Signature Date

RESOLUTION

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

The City Manager be authorized to execute the following documents between the CITY OF EL PASO and TRANSTELCO, INC.:

1) Memorandum of Agreement summarizing the various agreements between the parties, the terms of payment and amounts owed by company to the City, and clarifying certain rights and obligations of the parties.

2) Amendment to Fiber Lease Agreement revising the City's existing lease of 144 fiber strands along 134,239 linear square feet of conduit owned by the company and the related Memorandum of Fiber Lease.

3) Amendment to Maintenance Agreement revising the maintenance of City's leased fiber strands along 134,239 linear square feet of conduit owned by the company.

4) Memorandum of Agreement related to the License to construct, maintain and use the Stanton Street Bridge for installing fiber optic cable for company's telecommunications network.

5) Memorandum of Conduit Lease related to the Lease of City Conduit the company's lease and installation of fiber along a 10,285 linear square foot city-owned conduit in the downtown area.

ADOPTED this _____ day of _____, 2011.

THE CITY OF EL PASO

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Miguel A. Gamino Jr., Director
Information Technology Department

CITY CLERK DEPT.
2011 DEC 15 AM 9:59

11-1037-010 Reso Transtelco Agreemnts
BAO

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (the "Agreement") is made and entered into on this ____ day of December, 2011 by and between Transtelco, Inc., a Texas corporation ("Transtelco") and the City of El Paso, Texas, a municipal corporation ("City").

I. RECITALS

A. In January of 2006 Transtelco performed certain repairs to the Stanton Street International Bridge (the Bridge) and at the same time, installed Transtelco's fiber across the Bridge, Transtelco desires to enter into a License Agreement with the City to document this installation and use (the License Agreement) and desires to pay all amounts owed for Transtelco's past use of the Bridge; and

B. In 2006 and 2009 Transtelco installed certain underground conduits in the downtown area for the City (the City Conduits) and installed Transtelco's fiber in the City Conduits, and Transtelco desires to enter into a Conduit Lease with the City in order to document this installation and use (the Conduit Lease) and desires to pay all amounts owed for Transtelco's past use of the City Conduits; and

C. Transtelco and the City entered into a Fiber Lease Agreement dated December 18, 2007 (the "Fiber Lease") by which the City leased 144 fiber optic strands for high-speed connectivity (the "City Fiber") located in an underground conduit approximately 26 miles in length (the "Transtelco Conduit"); and

D. Transtelco and the City entered into a Maintenance Agreement dated December 18, 2007 (the Maintenance Agreement) in which Transtelco agreed to maintain the City Fiber in the Transtelco Conduit; and

E. The City and Transtelco desire to enter into this Agreement in order to reflect that they will enter into the License Agreement and the Conduit Lease, that Transtelco will pay all amounts it owes to the City under the terms of payment specified herein, and to clarify certain rights and obligations of the parties in the Fiber Lease and the Maintenance Agreement. The License Agreement and Conduit Lease as well as the Fiber Lease as amended and the Maintenance Agreement as amended, are collectively referred to herein as the "Transtelco Agreements."

II. AGREEMENT

1.0 **License and Rental Fees**. Transtelco and the City agree to execute the License Agreement and the Conduit Lease of even date herewith., and Transtelco agrees that it owes to the City all of the license and rental fees (collectively the "Fees") through November of 2011 in the amount set forth on **Exhibit "A"** attached hereto and made a part hereof.

2.0 **Payment Terms**. Transtelco agrees to pay the Fees in four substantially equal payments with the first 25% due upon the Effective Date of this Agreement. Every four months thereafter-another 25% payment shall be made until the Fees are paid in full. Interest on the unpaid amounts shall be calculated at

2.5% per annum from the date of execution, but any past due payments shall accrue interest at 10%. No assignment of this Agreement or of any of the other agreements referred to herein may be made before the Fees and all interest are paid in full.

3.0 **Fiber Lease**. Transtelco and the City agree to amend the Fiber Lease pursuant to the amended terms in the Amendment to Fiber Lease of even date herewith.

4.0 **Maintenance Agreement**. Transtelco and the City agree to amend the Maintenance Agreement pursuant to the Amended Maintenance Agreement of even date herewith.

5.0 **No Admissions**. Nothing in this Agreement is an admission of liability by any party.

6.0 **Jurisdiction and Venue**. This Agreement is made according to the laws of the State of Texas. The parties expressly agree that this Agreement is governed by, and will be construed and enforced in accordance with Texas law. Venue shall be in El Paso County, Texas.

7.0 **Binding Nature**. This Agreement is binding and inures to the benefit of the Parties and their respective representatives, successors, and assigns.

8.0 **Final Agreement**. This Agreement and the Transtelco Agreements contain the entire agreement between the parties. This Agreement and the Transtelco Agreements supersede any and all prior agreements, arrangements, or understandings between the parties on all subjects in any way related to the transactions between the City and Transtelco. No oral understandings, statements, promises, or inducements contrary to or consistent with the terms of this Agreement and the Transtelco Agreements exist, and they are not subject to any modification, waiver, or addition that is made orally. This Agreement and the Transtelco Agreements are subject to modification, waiver, or addition only by means of a writing signed by all Parties.

9.0 **Invalidity.** If any provision of this Agreement, is prohibited by law or otherwise determined to be illegal, invalid or unenforceable in a court of competent jurisdiction, such provision shall not affect the validity of the remaining provisions of this Agreement; instead, the Agreement shall be construed as if it did not contain the illegal, invalid or unenforceable provision (s) and the rights and obligations of the parties shall be construed and enforced accordingly.

10.0 **Non-Inference**. The City and Transtelco agree that this Agreement has been freely negotiated by both parties and that in any controversy, dispute or contest over the meaning, interpretation, validity or enforceability of this Agreement, or any of its terms or conditions, there shall be no inference, presumption or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

THE CITY OF EL PASO

_____

Joyce Wilson
City Manager

98236.1

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____ day of _____, 20__, by Joyce Wilson as City Manager on behalf of the **CITY OF EL PASO.**

_____
Notary Public, State of Texas

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Miguel A Gamiño, Jr.
Assistant Director, Information Technology

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.**, a Texas corporation.

Lynne K. Mottley
Notary Public, State of Texas

NOTARY PUBLIC STATE OF TEXAS
LYNNE K. MOTTLEY
Notary Public, State of Texas
My Commission Expires 10-17-2014

98236.1

FEES OWED TO CITY BY TRANSTELCO [1]

CONDUIT LEASE payable monthly with 5% annual increase
[Through November 30, 2011]

Route #2		
2006	$6,820.85*	6,820.85 LF
2007	$7,161.89	x $1 per lineal foot
2008	$7,519.99	*$6,820.85 in 2006
2009	$7,895.98	
2010	$8,290.78	
1/1/11 to 11/30/11	$7,979.88	
	$45,669.37	

Route #1		
From 2009	$3,464.34*	3,464.34 LF
2010	$3,637.56	x $1 per lineal foot
1/1/11 to 11/30/11	$3,501.15	*$3,464.34 in 2009
	$10,603.05	

Conduit Lease total = $56,272.42

STANTON BRIDGE LICENSE payable annually on January 1st of each year with 5% annual increase
[Through December 31, 2011]

2006	$20,000	$136,039.00
2007	$21,000	- 36,000.00 credit
2008	$22,050	$100,039.00
2009	$23,153	
2010	$24,310	
2011	$25,526	

STANTON BRIDGE FEE payable annually on January 1st of each year with 5% annual increase
[Through December 31, 2011]

2006	$5,538	$37,669	923 LF
2007	$5,815		x $6 per lineal foot
2008	$6,106		$5,538 in 2006
2009	$6,411		
2010	$6,731		
2011	$7,068		

Stanton total= $137,708.00

Grand total= $193,980.42

EXHIBIT "A"

[1] All figures based on Calendar Year.

11-04-11

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