

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: Not Applicable
Total Estimated Receipt: Not Applicable

BACKGROUND / DISCUSSION:

The Information Technology Department is requesting that Council authorize the City Manager to execute the Amendment to Transtelco Fiber Lease Agreement between Transtelco, Inc. and the City of El Paso. The parties desire to amend the December 18, 2007 Fiber Lease Agreement pursuant to Section 4.2 of the Agreement permitting them to do so by mutual agreement. This is a new amendment to this agreement.

Transtelco and the City agree that all of the rental payable in the Fiber Lease Agreement has been paid in full and no further rental or other monetary payments are due by the City under the Fiber Lease Agreement for its entire ten (10) year term and includes the option for the City to extend for two additional ten (10) year terms. The term of the Agreement shall commence on the effective date of this Amendment.

The City leases 144 fiber optic strands within approximately 25.5 miles of Transtelco conduit. The 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 the City's Lease will continue regardless of any foreclosure of the conduit

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: Not Applicable
Amount: Not Applicable
Funds Available: Not Applicable
Funds Source: Not Applicable

BOARD / COMMISSION ACTION: N/A

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

DEPARTMENT HEAD: <u>Miguel Gamino</u>	_____	<u>December 14, 2011</u>
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

ATTEST:

John F. Cook, Mayor

Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

Bertha A. Ontiveros

Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

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

It is agreed that the Company has no right or intention to grant any security interests to third parties in the City Fiber and any execution of a document by Company that purports to grant such an interest shall constitute a default by the Company in the Agreement. In the event that the Company intends to grant or has granted a security interest to a third party creditor in the Company's underground conduit along the Designated Fiber Route, the Company agrees to keep the creditor current. Any uncured default by the Company to the lien creditor constitutes a default by the Company in the Agreement unless prior to the default the Company provides the City with a Non-Disturbance Agreement from the lien creditor in a form acceptable to the City.

Effective this ___ day of _____, 2011.

CITY OF EL PASO:

By: _____
Joyce A. Wilson
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Bertha A. Ontiveros
Assistant City Attorney

Miguel Gamino, Director
Information Technology Department

TRANSTELCO, INC.

By: _____
Miguel Fernandez, President

ACKNOWLEDGEMENTS

STATE OF TEXAS)
)
COUNTY OF EL PASO)

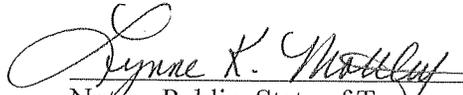
This instrument was acknowledged before me on the ___ day of _____, 2011 by Joyce Wilson, City Manager of the City of El Paso.

My commission expires:

Notary Public, State of Texas

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 21st day of November, 2011 by Miguel Fernandez as President of Transtelco, Inc.



Notary Public, State of Texas

My commission expires:

