

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

DEPARTMENT: Information Technology Services

AGENDA DATE: February 26, 2019

PUBLIC HEARING DATE: March 5, 2019

CONTACT PERSON NAME AND PHONE NUMBER: Enrique Martinez Jr. – Director
Information Technology Services, (915) 212-1400
Sol Cortez – Assistant City Attorney (915) 212-1106

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 1 – Cultivate an Environment Conducive to Strong, Sustainable Economic Development

SUBGOAL: 1.1 Stabilize and expand El Paso's tax base

SUBJECT:

AN ORDINANCE GRANTING A LEASE TO MCALLEN DATA CENTER, LLC. OF A SINGLE DUCT IN A PORTION OF THE CITY'S EXISTING UNDERGROUND CONDUIT SYSTEM ON ZARAGOZA ROAD BETWEEN ZARAGOZA INTERNATIONAL BRIDGE AND CHITO SAMANIEGO DR. AND ROJAS DR. FOR THEIR INTERNAL FIBER OPTIC TELECOMMUNICATIONS SYSTEM UTILIZING THE CITY'S EXISTING UNDERGROUND CONDUIT SYSTEM ACROSS, OVER AND UNDER PORTIONS OF PUBLIC RIGHT-OF-WAY ALONG ZARAGOZA ROAD WITHIN THE CITY OF EL PASO. THE FOLLOWING CONSIDERATION IS TO BE PAID TO THE CITY: \$19,019.70 (CONDUIT LEASE FEE) AND AN ANNUAL FEE (\$25,000.00)."

BACKGROUND / DISCUSSION:

The City of El Paso owns a conduit system for communication purposes on the east side of El Paso, Texas alongside of Zaragoza road. The lease will allow McAllen Data Center, LLC. to utilize the conduit to install their fiber optic cable to connect to their communication system. McAllen Data Center, LLC. will pay conduit lease fees per lineal foot and an annual fee for the use of the conduit system.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

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

DEPARTMENT HEAD:



Enrique Martinez Jr., Information Technology Services Director

ORDINANCE NO.: _____

AN ORDINANCE GRANTING A LEASE TO MCALLEN DATA CENTER, LLC. OF A SINGLE DUCT IN A PORTION OF THE CITY'S EXISTING UNDERGROUND CONDUIT SYSTEM ON ZARAGOZA ROAD BETWEEN ZARAGOZA INTERNATIONAL BRIDGE AND CHITO SAMANIEGO DR. AND ROJAS DR. FOR THEIR INTERNAL FIBER OPTIC TELECOMMUNICATIONS SYSTEM UTILIZING THE CITY'S EXISTING UNDERGROUND CONDUIT SYSTEM ACROSS, OVER AND UNDER PORTIONS OF PUBLIC RIGHT-OF-WAY ALONG ZARAGOZA ROAD WITHIN THE CITY OF EL PASO. THE FOLLOWING CONSIDERATION IS TO BE PAID TO THE CITY: \$19,019.70 (CONDUIT LEASE FEE) AND AN ANNUAL FEE (\$25,000.00).

WHEREAS, MCALLEN DATA CENTER, LLC. (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 install the fiber optic cable that through its contractor 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 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 Conduit Duct Lease Agreement, and any future amendments or extensions to such Agreement, incorporating a lease on behalf of the CITY OF EL PASO, hereinafter referred to as "City," upon the following terms, to MCALLEN DATA CENTER, LLC. hereinafter referred to as "Lessee":

1. This Conduit Duct Lease Agreement shall be in a form that is attached and incorporated as Exhibit "A"; and
2. The Conduit Duct Lease Agreement 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 this Agreement, Lessee shall pay to the City the sum set forth in Section 4 of Exhibit "A," subject to the terms and conditions of this ordinance and Agreement; and
4. This Agreement shall be for a term of seven (7) years from the Effective date of the Agreement and may be extended by a two (2) seven-year terms from the expiration date of the initial term as provided in the Agreement.

PASSED AND APPROVED this _____ day of _____, 2019.

THE CITY OF EL PASO

ATTEST:

Laura D. Prine
City Clerk

Dee Margo
Mayor

APPROVED AS TO FORM:



Sol M. Cortez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Enrique Martinez, Jr., Director
Information Technology Department

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

EXHIBIT "A"
CONDUIT DUCT LEASE
AGREEMENT

THIS CONDUIT LEASE AGREEMENT is made and entered into this ____ day of _____ 2019 ("Effective Date"), by and between the CITY OF EL PASO, Texas, a Texas Municipal Corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), and MCALLEN DATA CENTER, LLC. (hereinafter referred to as "Lessee").

WITNESSETH

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

WHEREAS, Lessee desires to lease a portion of the City's Conduit System ("Leased Conduit") to install fiber optic conduit belonging to Lessee (the "Fiber") in connection with Lessee's fiber optic telecommunications network; and

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

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

SECTION 1. SCOPE AND PURPOSE

The City hereby grants to Lessee, a non-exclusive leasehold interest to install, operate, repair, replace and maintain within the Leased Conduit a one (1) inch inner-duct which will include a 144 strand fiber optic cable (as described in Attachment "A", attached hereto and incorporated into this Lease) certain fiber belonging to Lessee (the "Fiber" or "Lessee's Fiber") in connection with Lessee's fiber optic telecommunications network, including transmission of data with and on behalf of customers of Lessee (collectively, the "Permitted Use"). Lessee does not have the right under this Lease to conduct any activity with the Fiber that is inconsistent with any applicable state or federal industry regulations.

At all times during the Lease, Lessee shall comply with the City Capital Improvement Department's current specifications and requirements concerning installation, maintenance and

use of fiber optics and conduits. Lessee shall not allow the placement of any additional cable without the written consent of the City.

SECTION 2. LOCATION OF CONDUIT

The Lease Conduit to Lessee is located in east El Paso specifically described as follows:
Route. Commencing at intersection of Chito Samaniego Dr. and Rojas Dr. Thence Southeast to the southwest corner of Adabel Dr. and Rojas Dr. The route will then follow a southwest direction to the northwest corner of Adabel Dr. and Gateway Blvd. West. The route will follow a southeast direction along the northern pathway of Gateway Blvd. for about 900 feet. The route will then continue on a southwest direction crossing I-10 to the corner of Diesel Dr and Gateway Blvd. East. The route will then follow a southwest direction to the southwest corner of Diesel Dr. and Castner Dr. The route will continue on a southeast direction to the southwest corner of Castner Dr. and Valley Crest Dr. The route will then continue a south direction to the northwest corner of Valley Crest and Escobar Dr. The route will continue a southeast direction to the northwest corner of Escobar Dr. and N Zaragoza Rd. The route will then continue on a southwest path to the northwest corner of Zaragoza Rd and Border Hwy. The route will continue on a northwest direction along Border Hwy for about 100 feet. The route will then continue on a southwest direction across the Cesar E. Chavez Border Hwy and finish at the entrance Toll Plaza un-named road.

SECTION 3. TERM

The term of this Agreement shall be seven (7) years from the Effective Date the Agreement unless terminated earlier as provided herein ("Initial Term"). At the end of the Initial Term, Lessee shall have the option to extend this Agreement for two (2) additional successive seven (7) year terms ("Options"), under the terms of this Agreement. Lessee shall notify the City of its intent to exercise its first Option in writing to the City no later than ninety (90) days prior to the expiration date of the Initial Term, and its second Option in writing to the City no later than ninety (90) days prior to the expiration of the first Option term. Should Lessee fail to timely submit its notice of its intent to exercise either Option, the Agreement shall expire by its own terms.

SECTION 4. CONSIDERATION

A. Conduit Lease Fee: As consideration for the use of the Conduit the Lessee shall pay a Conduit Lease Fee of Nineteen Thousand Nineteen and 70/100 (\$19,019.70) per year. The Conduit Fee is based on seventy cents (\$0.70) per lineal foot per year.

B. Annual Fee: The Lessee shall pay an Annual Lease fee of Twenty Five Thousand and No/100 Dollars (\$25,000.00) for the first year of the Initial Term of this Agreement. The Annual Fee is subject to a 5% annual escalation each year of the Initial Term. The 5% escalation to the fee will be applied to the Options. The Annual Fee is further described in Attachment "B".

C. The Annual Fee and the Conduit Lease Fee shall collectively be referred as the "Total Fee". Beginning on January 1, 2020, the Total Fee shall be paid no later than January 1st of each year. For the year 2019, the Total Fee shall be prorated to Forty Thousand Eight Hundred Forty Nine and 75/100 (\$40,849.75).

D. Failure to remit payment as provided in this Section shall be cause for termination. Lessee's failure to make the payment within thirty-days (30) after the payment is due shall constitute a late payment and Lessee shall pay the City a late charge equal to 5 percent of the past due amount. However, upon notification of the failure to remit payment, the Lessee shall have thirty days to remit payment in full including any late charges.

E. In addition to the Total Fee, Lessee 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 Lessee continues use of the City's Conduit System after the expiration or termination of this Agreement, the amount of the Total Fee due and payable to the City shall be double and paid monthly until Lessee ceases all use of the City's Conduit System, or another agreement is executed.

SECTION 5. CITY'S USE OF CITY PROPERTY

The City reserves the right to use the surface or subsurface or airspace around and above the Leased Conduit 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 Leased Conduit. Further the City expressly reserves the right to install, repair, reconstruct and relocate not only the Leased Conduit 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 Leased Conduit 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 Conduit 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. Additionally, the Lessee acknowledges that portions of the City's Conduit System is located in right-of-way that belongs to the Texas Department of Transportation (TxDOT). Lessee will be required to relocate Lessee's Fiber at Lessee's cost if required by TxDOT. Notwithstanding anything contained to the contrary in this Lease, the Total 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 6. INDEMNIFICATION AND INSURANCE

LESSEE OR ITS INSURER WILL INDEMNIFY, DEFEND AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON TO THE EXTENT ARISING OUT OF OR RELATED TO THIS AGREEMENT, even where such damage, injury, loss, illness, physical or mental impairment, loss of service, or death results from or involves NEGLIGENCE, or allegations of negligence on the part OF THE CITY, its officers, agents, or employees.

Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to LESSEE every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Lessee will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Consultant may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Lessee will pay all judgments finally establishing liability of the City in actions defended by Lessee pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Lessee, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to Lessee's property from any cause.

Prior to the approval of this Lease by City Council, Lessee shall provide the City with a certificate of liability insurance and shall maintain such insurance in effect during the term of this Lease, in the amount of One Million Dollars (\$1,000,000.00) primary coverage plus Five Million Dollars (\$5,000,000.00) umbrella or other securities as acceptable to the City's Risk Manager.

These amounts are not a limitation upon Lessee's agreement to indemnify and hold the City harmless.

Lessee 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 ten (10) 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. Lessee shall file an original of the policy or certificate of insurance with the City Clerk, the Street Department, the Development Services Department, and the Capital Assets Management Division prior to the execution of this Lease. The policy shall contain a provision that the policy will not be terminated without providing the City with thirty (30) prior written notice of termination.

So long as any construction or maintenance work of Lessee is limited to the Fiber and will not be on the Leased Conduit no payment and performance bond is required before any new work or repair work begins. Before any work on the Leased Conduit begins by Lessee where construction costs are estimated to be \$25,000 or more, Lessee shall be required to provide Lessor with a payment and performance bond in the estimated amount of the project. 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.

SECTION 7. TERMINATION

A. Right to Cure. If the termination by the City is solely for failure to pay the consideration of this Agreement, the City shall give Lessee ten (10) days written notice to cure, unless Lessee has not timely paid the Total Payment 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 Conduit. If Lessee does not remove all of its Fiber from the Leased Conduit 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.

C. Miscellaneous. The City shall have the right to terminate this Lease in the event of (i) failure of Lessee to be in good standing with the applicable regulatory authorities; or (ii) a creditor of Lessee obtaining a lien on the Fiber without agreeing that the lien is subject to the terms of this Lease;

SECTION 8. RECORDS

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

SECTION 9. NOTICE

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

City of El Paso
ATTN: City Manager
300 N. Campbell
El Paso, Texas 79901

with copies to: City of El Paso
ATTN: Director of Information Technology
300 N. Campbell
El Paso, Texas 79901

and: MCALLEN DATA CENTER, LLC.
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 10. ASSIGNMENT

A. The rights granted by this Agreement inure to the benefit of Lessee, 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. City-approved Assignees who obtain possession and use of all or any part of the Leased Conduit must agree to be bound by and perform all of the obligations of Lessee under this Agreement. The City shall not disturb the possession or use of the Leased Conduit by such City approved Assignee and shall recognize such Assignee's right to possession and use thereof, subject, nevertheless, to the terms of this Agreement and the respective rights of the parties herein.

SECTION 11. LEASE, SALE OR DEDICATION OF OR SECURITY INTEREST OR LIENS UPON LESSEE'S FIBER

Lessee, 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 Lessee's Fiber, to any non-Lessee person or entity. Notwithstanding the foregoing, Lessee shall be allowed, without the consent of the City or the El Paso City Council: (i) to lease, license, sublicense, and permit the use

of Lessee's Fiber installed within the Leased Conduit to Lessee's customers utilizing Lessee's data center at 11455 Cedar Oak Drive, El Paso, Texas, provided that Lessee retains sole ownership of such Fiber at all times; and (ii) Lessee shall be allowed to provide services to its customers utilizing such data center through Lessee's Fiber installed within the Leased Conduit. Lessee shall not allow the placement of any additional cable without the written consent of the City.

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

SECTION 12. LESSEE'S ACCESS AND SECURITY

Lessee shall have twenty-four (24) hour access to the Lessee's Fiber for purposes of maintenance, upgrades and repair, subject to any Federal requirements or regulations. The City may coordinate with the Lessee 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 Lessee's Fiber without providing seventy-two (72) hours advance notice to Lessee. City shall have the right to supervise the Lessee's and any third party's access to the Lessee's Fiber for security purposes.

SECTION 13. 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, Lessee 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 continue such cure to completion.

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

D. Severability Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality shall not affect the validity of the remainder 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.

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.

(Signatures begin on the following page.)

THE CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:



Sol M. Cortez
Senior Assistant City Attorney



Enrique Martinez, Jr., Director
Information Technology Department

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____ day of _____, 2019,
by Tomás González 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:

ACCEPTANCE

The attached Agreement, with all conditions thereof, is hereby accepted this 26th day of February, 2019.

LESSEE: MCALLEN DATA CENTER, LLC.

By: [Signature]
Juan Salazar, CEO
(Printed Name and Title)

ACKNOWLEDGEMENT

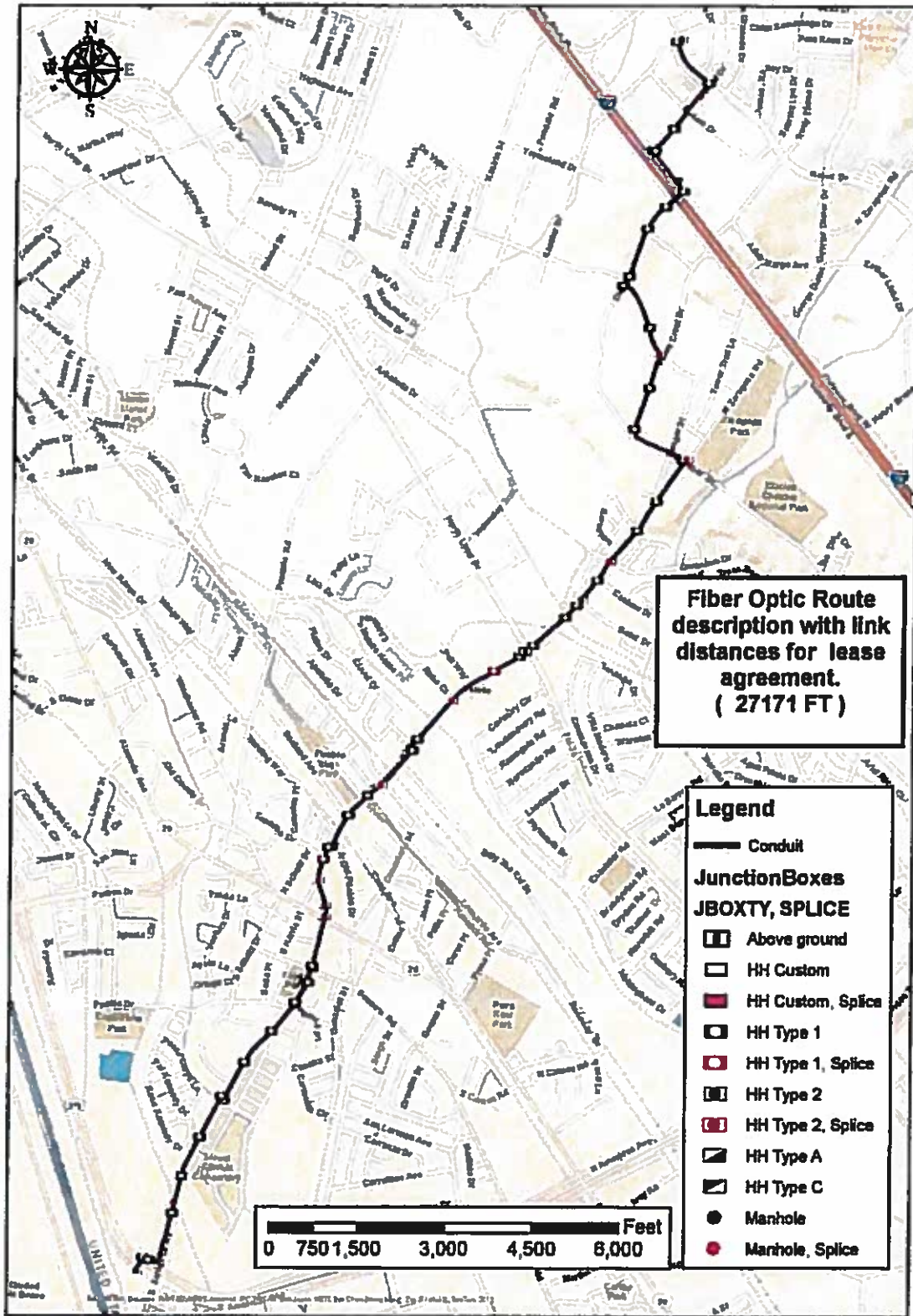
THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 26 day of Feb, 2019,
by Juan Salazar as CEO on behalf of
MCALLEN DATA CENTER, LLC., as Lessee.



[Signature]
Notary Public, State of Texas
Felicia Rose Ruiz
Notary's Printed or Typed Name:
02-28-2022
My Commission Expires:
My Commission Expires:

ATTACHMENT "A" ROUTE



**ATTACHMENT "B"
ANNUAL FEE**

Year	% Increase	Fee
1	0%	\$ 25,000.00
2	5%	\$ 26,250.00
3	5%	\$ 27,562.50
4	5%	\$ 28,940.63
5	5%	\$ 30,387.66
6	5%	\$ 31,907.04
7	5%	\$ 33,502.39
8	5%	\$ 35,177.51
9	5%	\$ 36,936.39
10	5%	\$ 38,783.21
11	5%	\$ 40,722.37
12	5%	\$ 42,758.48
13	5%	\$ 44,896.41
14	5%	\$ 47,141.23
15	5%	\$ 49,498.29
16	5%	\$ 51,973.20
17	5%	\$ 54,571.86
18	5%	\$ 57,300.46
19	5%	\$ 60,165.48
20	5%	\$ 63,173.75
21	5%	\$ 66,332.44