

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

CITY CLERK DEPT.
2018 APR 12 AM 10:23

DEPARTMENT: Information Technology Services

AGENDA DATE: April 17, 2018

PUBLIC HEARING DATE: N/A

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 2 – Set the Standard for a Safe and Secure City

SUBGOAL: 2.3 Increase public safety operational efficiency

SUBJECT:

That the City Council authorize the City Manager to sign a Communications Site Lease Agreement between the City of El Paso and the Department of Public Safety ("DPS") for the lease of a portion of the property located at 1075 Pendale Road, known as the Collection Site, for DPS to construct, install, operate and maintain a 300 foot self-supporting communications tower and facility to store radio equipment and backup generator, for a term of five (5) years to commence not later than one month following the execution of this Agreement or upon the start of construction, whichever occurs first, and two (2) options to extend the term for five-year periods each, which may be exercised administratively by the City Manager or Designee; and that the City's use of the tower for the installation of City communication equipment is sufficient consideration for the lease of City property."

BACKGROUND / DISCUSSION:

In 2012, the City of El Paso invested in the 800 MHZ P25 System to support regional public safety radio communications. The P25 Core System was partially funded by PSIC Grant focused on improving interoperability capabilities between City First Responders and Regional First Responders.

The construction of the new DPS 300' tower may further enhance First Responders interoperability and radio coverage in the Mission Valley and Far East El Paso areas. The lease and partnership with DPS may minimize capital investment costs for the City of El Paso by sharing use of the new tower.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

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

DEPARTMENT HEAD:



Enrique Martinez Jr., Information Technology Services Director

RESOLUTION

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

That the City Council authorizes the City Manager to sign a Communications Site Lease Agreement between the City of El Paso and the Department of Public Safety ("DPS") for the lease of a portion of the property located at 1075 Pendale Rd., known as the Collection Site, for DPS to construct, install, operate and maintain a 300 foot self- supporting communications tower and facility to store radio equipment and backup generator, for a term of five (5) years to commence not later than one month following the execution of this Agreement or upon the start of construction, whichever occurs first, and two (2) options to extend the term for five-year periods each, which may be exercised administratively by the City Manager or Designee; and that the City's use of the tower for the installation of City communication equipment is sufficient consideration for the lease of City property.

ADOPTED THIS _____ DAY OF _____ 2018.


CITY OF EL PASO:

Dee Margo,
Mayor

ATTEST:

Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Sol M. Cortez
Senior Assistant City Attorney

APPROVED AS TO CONTENT



Enrique Martinez, Jr., Director
Information Technology Department

STATE OF TEXAS)
) COMMUNICATIONS SITE LEASE
) AGREEMENT
COUNTY OF EL PASO)

COMMUNICATIONS SITE LEASE AGREEMENT

This Interlocal Agreement (Agreement) is entered into on the date of execution by the last signatory to the Agreement, by and between the **CITY OF EL PASO**, a home rule municipal corporation (City), and the **DEPARTMENT OF PUBLIC SAFETY** (Lessee), an agency of the State of Texas, collectively known as Parties.

BACKGROUND

The City owns and maintains the real property located at the junction of 1075 Pendale Road, known as Collection Site, commonly known as "Property" and further described in **Exhibit "A"**, and incorporated by reference into this Agreement. Lessee desires to lease a portion of the Property to construct and install a communications tower, facility, and its related equipment to enhance the interoperable communications capabilities of the City and the Lessee and reduce communication gaps. This will further benefit the City and the Lessee by improving and enhancing the public safety communications of the City and the surrounding areas.

AUTHORITY

The City and the Lessee are authorized to enter into this Agreement under the Interlocal Cooperation Act, Texas Government Code 791.001 et seq., (the Act). Lessee is further authorized to enter into this Agreement under Chapter 411, Texas Government Code.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

1. **PREMISES.**

The City leases the defined Premises (Leased Premises) to Lessee for the purpose of constructing and installing, operating, maintaining, and repairing a 300' self-supporting tower and facility to store radio equipment and backup generator, (Radio Communications Facility). The Leased Premises consists of that certain parcel of property, located in the City of El Paso, the County of El Paso, and the State of Texas, which is more particularly shown on **Exhibit "B"**, and incorporated by reference into this Agreement. The City and Lessee will execute an amendment to this Lease setting out the metes and bounds description and all applicable square footage for the Leased Premises as Exhibit "B-1". The Director of Information Technology may execute the amendment administratively on behalf of the City.

2. **CONDITIONS PRECEDENT TO INSTALLATION OF EQUIPMENT.**

The Parties agree that Lessee's right to construct and install the Radio Communications Facility will not commence until the following conditions are satisfied:

- (a) City has obtained and maintained all City issued licenses, permits and approvals enabling Lessee to construct and install the Radio Communications Facility at its own expense. Lessee has obtained and maintained the applicable licenses, permits, and approvals enabling Lessee to construct, install, operate, maintain, and repair the Radio Communications Facility on the Leased Premises at its own

expense. Each Party is responsible for obtaining its respective Federal Communications Commission licenses at its own expense.

- (b) Lessee will submit to City detailed engineering plans and specifications of the planned construction and installation (Lessee's Plans). Lessee may not proceed with the construction and installation until City approves the Lessee's Plans, , as it relates to zoning and all other required City issued licenses, permits and approvals, in writing once DPS has completed the procurement process. The City and Lessee will coordinate the commencement of construction once the plans are approved by the City.

3. ACCESS, USE OF SITE.

- (a) Access to Site.

City grants to Lessee a non-exclusive license for pedestrian and vehicular ingress to and egress from the Site over the designated access area to the Leased Premises as described in Exhibit A, on a 24 hour per day, 7 day per week basis for the purposes of maintaining operating and repairing the Radio Communications Facility and to maintain, operate and repair utility lines, wires, cables, pipes, lines, or any other means of providing utility services to the Leased Premises. City will provide a 24 hour 7 day point of contact.

- (b) Authorized Persons; Safety of Personnel.

Lessee's right of access will be limited to authorized employees, contractors or subcontractors of Lessee, or persons under their direct supervision. Lessee will not allow any person to climb a tower without ensuring that such person is certified to do so and able to provide acceptable proof of the certification. Such certification will be provided to City prior to such person climbing the tower.

- (c) Courtesy Access Notice.

Both Parties understand that it will contact the other Party's dispatch prior to each Party's ingress and egress to the Leased Premises.

- (d) Lessee's Use of the Site.

Lessee will use the Leased Premises to construct, install, operate, and maintain only the Radio Communications Facility and will transmit and receive only within the Federal Communications Commission (FCC) licensed frequency ranges and at the power levels specified in this Agreement.

- (e) Zoning Approval.

Lessor will be solely responsible for all costs and expenses associated with any zoning application or amendment

- (f) Utilities.

Lessor will be responsible for providing and paying for all electricity and other utilities used by Lessee.

- (g) Maintenance and Repairs.

Lessee will be responsible for operating, maintaining, and repairing, the Radio Communications Facility at its sole cost.

- (h) City Use.

Lessee grants the City the right to use the Radio Communications Facility to install and maintain the communications equipment in Exhibit "C". Prior to installation, the City will give Lessee 90 day's written notice of the desire to install the City's equipment. If the City desires to add to the equipment or change the equipment listed in Exhibit "C", the City agrees to give Lessee 90 days' written notice of the desire to install the City's additional equipment. Prior to installation and approval of additional equipment, the City will provide a Professional Engineer stamped structural analysis certifying that any changes or additions are compliant with the existing structural limits.

The required FCC licenses will have been obtained prior to installation and will be provided upon request. Any changes to Exhibit "C" will be by written amendment signed by both parties. The Director of Information Technology may execute the amendment administratively on behalf of the City.

4. TERM.

Initial Term. The initial term of this Agreement will be five years commencing not later than one month following the execution of this Agreement or upon the start of construction, whichever occurs first (Commencement Date), and terminating on the fifth anniversary of the Commencement Date unless otherwise terminated as provided in Section 14, Termination. This Agreement may be renewed up to two times for periods of five years at the mutual agreement of both parties. The City may agree to the renewal administratively through the City Manager or Designee.

5. AMENDMENTS: No modification or amendment to this Agreement will become valid unless in writing and signed by both Parties.

6. CONSIDERATION.

- (a) As part of the consideration, Lessee will provide the City access to the use of the communications equipment listed in Exhibit "C".
- (b) Lessee may not expand the Leased Premises for Lessee's equipment beyond the square footage of the Premises without City's prior written consent.

7. INTERFERENCE.

- (a) Lessee's Radio Communications Facility will not cause interference with the operation of any other radio communications equipment existing on the City's Property as of the date of this Lease (Pre-existing Equipment). Lessee's Radio Communications Facility will comply with all non-interference rules of the FCC. If Lessee is notified in writing that its operation are causing such interference, Lessee will immediately take all necessary steps to determine the cause of and eliminate such interference.

Furthermore, the use of the Leased Premises will not interfere with the City's existing use of the Property.

- (b) The City will not permit the use of any portion of City's Property in a way which interferes with Lessee's use of the Leased Premises. In the event that Lessee experiences interference caused by any subsequent use, Lessee will notify the City in writing of such interference and City will cause the party who is causing such interference to cease operation in order to correct and eliminate such interference.
- (c) City's equipment will not cause interference with the operation of any of Lessee's radio communications equipment installed on the Lessee's Radio Communications Facility. The City's equipment will comply with all non-interference rules of the FCC. If the City is notified in writing that its operation are causing such interference, the City will immediately take all necessary steps to determine the cause of and eliminate such interference.

Furthermore, the City's use of the Leased Premises will not interfere with the Lessee's use of the Leased Premises and Radio Communications Facility.

8. RELOCATION OF EQUIPMENT BY CITY

The City will have the right to change the location of the Radio Communications Facility upon three hundred sixty (365) days written notice to Lessee, provided that said change does not, when complete, materially alter the signal pattern of the Radio Communications Facility existing prior to the change. Any such relocation will be performed at the City's expense and with reasonably minimal disruption to Lessee's operations and will be evidenced by an amendment to this Agreement.

9. TAXES. Lessor understands that Lessee is a tax exempt entity.

10. INDEMNITY AND INSURANCE. Lessee acknowledges that the City is self-insured for purposes of covering the Property and improvements.

Lessee is self-insured and self-administered for workers' compensation and automobile liability and there are no private insurance companies involved in either process. Consistent with the policies of the state, Lessee does not acquire commercial general liability insurance for torts committed by its employees who are acting within the scope of their employment. The Texas Tort Claims Act provides "that a governmental unit in the state is liable for property damage, personal injury and death proximately caused by the wrongful act or omission or negligence of an employee acting within his scope of employment...." Liability of the state government under these provisions is limited to money damages in a maximum amount of \$250,000 for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

11. ASSIGNMENT. Lessee may not assign this Agreement without providing 60 days' written to the City. The City may not assign this Agreement without providing 60 days' written to Lessee.

12. CITY'S REPRESENTATIONS AND WARRANTIES.

(a) Title. City represents and warrants that it has full right, power, and authority to execute this Agreement and that it has good and marketable title to the Property.

(b) Quiet Enjoyment. The City covenants that Lessee will have quiet enjoyment of the Leased Premises during the term of this Agreement and represents that it has obtained all necessary approvals and consents, and has taken all necessary action, to enable the City to enter into this Agreement.

13. NOTICES. All notices will be in writing and will be: (i) delivered by hand, (ii) sent via U.S. mail (return receipt requested), or (iii) sent by reliable overnight courier to the following addresses:

City of El Paso: City of El Paso
Attn: City Manager
300 N. Campbell
El Paso, TX 79901

Lessee: Department of Public Safety
Attn: Public Safety Communication Services
5805 N. Lamar Blvd., Bldg G Annex
Austin, Texas 78752

14. TERMINATION.

(a) Default. If either Party fails to carry out or comply with any of the requirements of this Agreement, this Agreement may be terminated. The default must be cured within 60 days of receipt of written notice of default. The termination of this Agreement, under any

circumstances whatsoever, will not affect or relieve either Party from any obligation or liability that may have been incurred under this Agreement, whether such claims are for compensation, for anticipated profits, or for any other reason. Such termination by either Party will not limit any other right or remedy available at law or in equity. The Parties will have a minimum of six months to remove its equipment at their respective cost.

- (b) Convenience. This Agreement may be terminated by either Party without further liability for any reason or for no reason, provided that Party delivers written notice of termination to the other Party prior to the Commencement Date. After the Commencement Date, this Agreement may also be terminated by either Party without further liability on 30 days prior written notice if Lessee is unreasonably restricted from installing, removing, replacing, maintaining or operating Lessee's Radio Communication Facility in the manner described in this Agreement (such as obtaining or maintaining any certificate, license, permit, authority or approval from any governmental authority, or funding). Such termination by either Party will not limit any other right or remedy available at law or in equity. The Parties will have a minimum of six months to remove its equipment at their respective cost.

15. MISCELLANEOUS.

- (a) Effect of Invalidity. If any provision of the Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement (or the application of such provision to persons other than those as to whom it is held invalid or unenforceable) will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.
- (b) Use of Hazardous Material: Lessee's Obligation. Lessee will not (either with or without negligence) cause or permit the escape, disposal or release of any Hazardous Material on or from the Leased Premises in any manner prohibited by law.
- (c) Choice of Law. This Agreement will be governed under the domestic laws of the State of Texas. The venue will be in Travis County, Austin, Texas.
- (d) Binding on Successors. This Agreement will be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.
- (e) Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes all understandings, offers, negotiations and other agreements concerning the subject matter contained in this Agreement. There are no representations or understandings of any kind not set forth in this Agreement. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both Parties.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective on the date of the last Party to sign.

(Signatures begin on next page)

CITY:
City of El Paso

Tomás González, City Manager

APPROVED AS TO FORM:



Sol M. Cortez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



Enrique Martinez Jr., Director
Information Technology Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

On _____, 2018, before me, _____ Notary Public, personally appeared **Tomás González** as **City Manager** of the City of El Paso personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for the State of Texas

My commission expires:

(Signatures continue on next page)

LESSEE:

Department of Public Safety

Mike Lesko, Division Director,
Law Enforcement Support Division
Date:

STATE OF TEXAS)
)
TRAVIS COUNTY)

On _____, before me, _____ Notary Public, personally appeared _____ & _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for the State of Texas

My commission expires:

Exhibit A
City of El Paso
1075 Pendale Deed

024438

2252

Prepared by the State Bar of Texas for use by lawyers only.
Revised 10-85. 1
© 1985 by the State Bar of Texas

88-1581 (3)
106-500

WARRANTY DEED
(Long Form)

Date: July 8, 1988

Grantor: Guadalupe Villalobos, individually, and d/b/a Signs by
Guadalupe Villalobos

Grantor's Mailing Address (including county): 1604 Bassett Avenue
El Paso County, El Paso, Texas 79901

Grantee: The City of El Paso

Grantee's Mailing Address (including county): No. 2 Civic Center Plaza
El Paso County, El Paso, Texas 79901-1196

Consideration:

The sum of Sixty Four Thousand Dollars (\$64,000.00).

Property (including any improvements):

All of Lots 62 and 63, ~~Block 2~~, Pendale Industrial Park Unit B, El Paso
County, El Paso, Texas, according to the map thereof on file in Book
43, Page 23, Plat records, El Paso County, Texas.

Reservations from and Exceptions to Conveyance and Warranty:

- A. Any visible and apparent right-of-way for roads, drainage and/or irrigation ditches.
- B. All matters emanating from contracts with El Paso County Water Improvement District #1.
- C. Rezoning contract and restrictions between William J. Reynolds, Jr., et al and City of El Paso, in Book 449, Page 887, County Clerk's Records, El Paso County, Texas.
- D. Rezoning contract and restrictions between Odom Investments, Inc. and City of El Paso, in Book 1467, Page 878, County Clerk's Records, El Paso County, Texas.
- E. Easements for public utilities as shown on the recorded map of said addition, of record in Book 43, Page 23, Plat Records, El Paso County, Texas.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

024588

JUL 12 10:54

Guadalupe Villalobos

ANY SALE, MORTGAGE, LEASE, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW

STATE OF TEXAS
COUNTY OF EL PASO
JUL 12 1988

COUNTY CLERK El Paso County, Texas
[Signature]

Guadalupe Villalobos
GUADALUPE VILLALOBOS, individually and
d/b/a SIGNS BY GUADALUPE VILLALOBOS

(Acknowledgment)

STATE OF TEXAS
COUNTY OF EL PASO

This instrument was acknowledged before me on the 8th day of JULY, 1988
by GUADALUPE VILLALOBOS, individually and d/b/a SIGNS BY GUADALUPE VILLALOBOS.



Cathy Sue Cremer
Notary Public, State of Texas
Notary's name (printed):

CATHY SUE CREMER, Notary Public
in and for the State of Texas
My commission expires 3-21-90

Notary's commission expires:

(Corporate Acknowledgment)

STATE OF TEXAS
COUNTY OF

This instrument was acknowledged before me on the _____ day of _____, 19____
by _____ of _____
a _____ corporation, on behalf of said corporation.

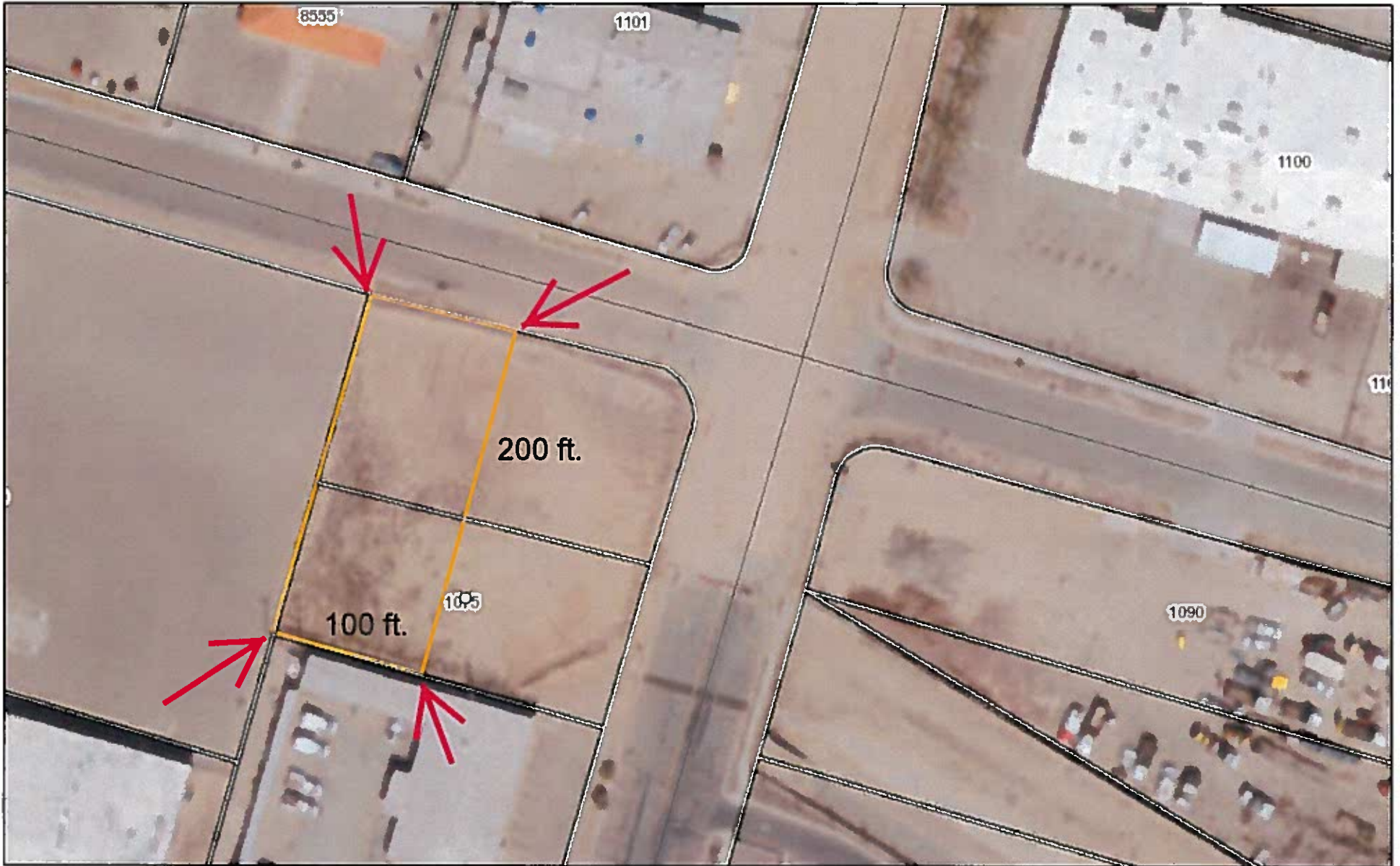
Notary Public, State of Texas
Notary's name (printed):

Notary's commission expires:

AFTER RECORDING RETURN TO:
City Attorney's Office
2 Civic Center Plaza
El Paso, Texas 79901-1196

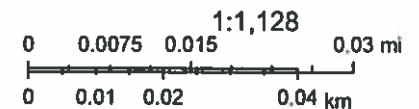
PREPARED IN THE LAW OFFICE OF:
City Attorney's Office
2 Civic Center Plaza
El Paso, Texas 79901-1196

Exhibit B Collection Site Tower Plot Location



April 4, 2018

- | | | | | |
|---|---|---|---|--|
|  User drawn lines | TRZ Parcels |  TRZ 2.3 |  TRZ 3.1 |  TIRZ |
|  Parcels |  TRZ 2.1 |  TRZ 2.4 |  TRZ 3.2 | |
|  International Bridges |  TRZ 2.2 |  TRZ 2.5 |  TRZ 3.3 | |



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Exhibit C - City of El Paso Tower Equipment List	
Quantity	Equipment Description
2	Expandable Site Subsystem Cabinets, 5 Channels Each
3	Transmit Antennas and Associated Cabling
1	Receive Antenna and Associated Cabling
2	Point to Point Dish Antennas and Associated Cabling
1	Alpha DC Power System
1	Simulcast GPS System
2	Site Routers
1	Monitoring and Scada System (MOSCAD) System