

**INTERLOCAL AGREEMENT BETWEEN THE
CITY OF SAN ANTONIO AND BEXAR COUNTY, TEXAS
FOR A NON EXCLUSIVE LICENSE
TO INSTALL CONDUIT AND FIBER OPTIC FACILITIES IN CITY RIGHTS-
OF-WAY TO CONNECT TWO COUNTY BUILDINGS**

This Interlocal License Agreement (the “License Agreement”) is made by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as “CITY”), a Texas Municipal Corporation and a political subdivision of the State of Texas, acting by and through its City Manager pursuant to Ordinance No. _____, passed and approved by the City Council on December, _____, 2015, and **BEXAR COUNTY**, a political subdivision of the State of Texas, acting through its County Judge pursuant to authority granted by Bexar County Commissioners Court on October, _____, 2015 (hereafter referred to as the “COUNTY”). The CITY and the COUNTY may hereinafter be referred to individually as the “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, the COUNTY has a need to increase broadband capacity to meet the growing demands of COUNTY agencies for data and communications services in order to more efficiently conduct the daily business of COUNTY government; and

WHEREAS, the COUNTY desires to install Conduit, Fiber Optic Cable and other Facilities in CITY Rights-of-Way to meet its broadband needs; and

WHEREAS, this License Agreement will allow COUNTY to install Fiber Optic Cable, Conduit, and other Facilities between two (2) COUNTY-designated facilities using CITY Rights-of-Way; and

WHEREAS, the Parties’ respective rights, duties and obligations are hereby set forth in this License Agreement.

NOW THEREFORE, THE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. DEFINITIONS

For purposes of this License Agreement, the following terms shall have the same meanings herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

- (a) “Applicable Municipal Codes” means, collectively, (i) Chapter 29 of the CITY’s Code of Ordinances as amended from time to time by City Ordinance, and (ii) Chapter 37 of the CITY’s Code of Ordinances, as amended from time to time by City Ordinance.
- (b) “Conduit” means the medium that holds Fiber Optic Cable.

- (c) "Excavation Manual" means the Utility Excavation Criteria Manual approved by the Director of Public Works on April 2, 2001, as amended from time to time.
- (d) "Facilities" means any and all of the COUNTY's ducts, spaces, manholes, poles, conduits, fiber optic cables, repeaters, power sources, underground and overhead passageways, and other equipment, structures, plant, and appurtenances located within the Public Rights-of-Way.
- (e) "Fiber Optic Cable" means cable consisting of bundles of glass threads that transmit digital information through the modulation of light wavers.

SECTION 2. GRANTING CLAUSE

- (a) The CITY hereby grants the COUNTY a non-exclusive License to use and occupy the Rights-of-Way listed and shown in **Exhibit "A"** to erect, install, construct, replace, reconstruct, and maintain Conduit, Fiber Optic Cable, and other Facilities under the CITY's Rights-of-Way between the COUNTY'S Adult Detention Center located at 200 N. Comal Street, San Antonio, Texas 78207, and the COUNTY'S Video Visitation and Re-Entry Center located at 222 S. Comal Street, San Antonio, Texas (collectively, the "COUNTY Buildings"). A copy of **Exhibit "A"** is attached to this License Agreement and made a part hereof for all purposes.

SECTION 3. CONSTRUCTION WORK-REGULATION BY CITY

- (a) All construction, excavation, and placement of Facilities in Public Rights-of-Way are subject to regulation under Chapter 29 of the CITY's Code of Ordinances and the Excavation Manual, and the COUNTY shall be required to obtain construction permits from the CITY's Right-of-Way Management Department in order to install, construct, and maintain Conduit, Fiber Optic Cable, and other Facilities in the Rights-of-Way, including paying the appropriate permitting fees.
- (b) Prior to beginning any excavation or boring project on Public Rights-of-Way, the COUNTY shall comply with the provisions of the Texas One Call utility locator service at least 48 hours in advance. The COUNTY has the responsibility to protect and support the various utility facilities of other providers during construction.
- (c) The CITY reserves the right to lay, and permit to be laid, sewer, gas, water and other pipe lines or cables and conduits, as well as drainage pipes and channels and streets 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 Rights-of-Way occupied by the COUNTY, and to change any curb or sidewalk or the grade of any street and to maintain all of the CITY'S facilities. In permitting such work to be done by others, the CITY shall not be liable to COUNTY for any damage caused by those persons or entities.
- (d) If the CITY requires the COUNTY to adapt or conform its Facilities, or in any way or manner to alter, relocate, or change its property to enable any other government body, legal entity, or person, except the CITY, to use, or to use with greater

convenience, any Right-of-Way, the COUNTY shall not be required to make any such changes until such government body, legal entity, or person shall have undertaken, with solvent bond, to reimburse the COUNTY for any loss and expense which will be caused by, or arise out of such removal, change, adaptation, alteration, conformance or relocation of the COUNTY'S Facilities; ***provided, however,*** that the CITY shall never be liable for such reimbursement.

- (e) The COUNTY'S right to use and occupy the Public Rights-of-Way shall not be exclusive and the CITY reserves the right to grant a similar use of same to itself or any person or entity at any time during the period of this License Agreement.
- (f) In the event the COUNTY finds it necessary to install poles on Public Rights-of-Way in order to connect Conduit, Fiber Optic Cable, or other Facilities between the two COUNTY Buildings set out in Section 2(a), such poles shall be of sound material and reasonably straight, and shall be set so that they will not interfere with the flow of water in any gutter or drain, and so that they will not unduly interfere with ordinary travel on the streets or sidewalk. The location and route of all poles, stubs, guys, anchors, conduits, fiber, cables, and other facilities placed and constructed by the COUNTY in the installation, construction and maintenance of its installed Facilities shall be subject to the lawful, reasonable and proper control, direction and/or approval of the CITY's Right-of-Way Manager.
- (g) Nothing contained in this License Agreement shall be construed to require or permit any pole attachment of Facilities owned, leased, or controlled by the COUNTY to be attached to CITY-owned poles or other physical plant, or placed in the CITY's Conduit. If the COUNTY desires to place attachments for any of its Facilities on CITY-owned poles, or if the COUNTY desires to place any of its Fiber Optic Cable in any CITY-owned duct or Conduit, then a separate, written agreement shall be required for such attachments or use of such ducts or Conduit by the COUNTY. Nothing contained in this License Agreement shall obligate or restrict the COUNTY in exercising its rights to voluntarily enter into pole attachment agreements with electric power companies or with other wire-owning companies that are authorized to operate within the CITY.
- (h) Following termination of this License Agreement for any reason, the COUNTY must remove or otherwise dispose of all Facilities installed in the CITY's Rights-of-Way pursuant to this License Agreement at its own expense within sixty (60) days. Failure to take this action will result in the COUNTY'S Conduit, Fiber Optic Cable and other Facilities will be considered abandoned and the property of the CITY.

SECTION 4. TERM

- (a) The License term and the rights, privilege and authority hereby granted shall be in force and effect for a term beginning upon final execution of this License Agreement by both Parties, and shall continue in effect for a term of ten (10) years ("Initial Term").
- (b) The COUNTY shall have the right to extend the License Agreement for three (3)

additional five (5) year terms (each a “Renewal Term”). Each Renewal Term shall be based on the same terms and conditions as set forth herein. The COUNTY may request renewal of the License Agreement by sending a ninety (90) day notice to the CITY prior to the expiration of the Initial Term or any Renewal Term.

- (c) The Effective Date of this License Agreement means the latest date on which this License Agreement is signed by both Parties following approval of the License Agreement by an ordinance of the San Antonio City Council.

SECTION 5. COMPENSATION FOR USE OF RIGHT-OF-WAY

- (a) The COUNTY shall either pay the amounts set out in Subsection A or make an in-kind contribution as set out in Subsection B:
 - A. A non-refundable ROW project assessment fee for each fiber optic license is five hundred dollars (\$500.00), and
 - i. An annual fee for use of public right-of-way for the purpose of installing aerial and/or subterranean fiber optic facilities based on the fair market value of the right-of-way used by the COUNTY. The licensed area must be as wide as the COUNTY will reasonably need to maintain the licensed facilities but not more than twenty (20) feet. The CITY in its discretion may utilize internal staff or engage an independent professional consultant to conduct an appraisal of the right-of-way subject to the license, based on the appraised values of adjoining properties as assessed by the Bexar County Appraisal District. The COUNTY shall be responsible for paying the right-of-way appraisal separate from the processing fee. The fair market value will be determined on a per-linear-foot basis of the right-of-way area associated with network footprint. The usage fee for the first year of the license will be determined by multiplying the per linear foot fair market value by the total number of square feet of right-of-way. An annual escalation factor of four (4) percent will be applied to the fee for year one in order to derive the usage fees for years two to ten of the license term. The CITY may negotiate a discount off the total licensing fee in exchange for in-kind contributions;
 - ii. The COUNTY shall remit the Right-of-Way access fees on an annual basis based on the payment schedule attached at Exhibit “B.” Each payment shall be due on effective date as set out in Section 5(b), and on every anniversary date and shall be accompanied by a statement explaining that the payment is made pursuant to this License Agreement; or
 - B. Instead of paying the fair market value fee set out in Chapter 37, the County may make an in-kind Contribution that shall consist of:
 - i. The COUNTY shall install and grant to the CITY one (1), four inch (4”)

Conduit along the route where the COUNTY-designated facilities are installed; and

- ii. The COUNTY shall grant the CITY one (1) Fiber Optic Cable strand along the route where the COUNTY-designated facilities are installed. The Fiber Optic Cable strand shall be installed in the Conduit installed and granted to the CITY pursuant to Subsection 5(a)B(i), immediately above.
 - iii. The Conduit and Fiber Optic Cable strand installed and granted to the CITY pursuant to Subsections (i) and (ii) of this Subsection 5(a)B shall be identical to the Conduit and Fiber Optic Cable strands the COUNTY installs for its use pursuant to this License Agreement. The granted Facilities shall be the CITY's property to be used as the CITY determines and the COUNTY shall have no right to reclaim such granted Conduit and Fiber Optic Cable strands.
- (b) If the COUNTY selects the compensation option set out in subsection 5(a)A, the CITY expressly reserves the right to renegotiate the compensation rate five (5) years after the effective date if the market so justifies to determine the fair market value of the right-of-way used by the COUNTY.

SECTION 6. INDEMNITY

The COUNTY and the CITY acknowledge that they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001, *et. seq.*, and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. The COUNTY and CITY shall each promptly notify the other in writing of any claims or demands that become known against them in relation to or arising out of activities under this Contract.

The provisions of this Section are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other government body, person or legal entity.

SECTION 7. INSURANCE REQUIREMENTS

The COUNTY and the CITY each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their applicable statutory obligations to each Party's employees.

With respect to the COUNTY and CITY, it is the stated policy of both entities not to acquire commercial general liability insurance for torts committed by employees of the governmental subdivision who are acting within the scope of their employment. Rather, Chapter 101 of the Civil Practice and Remedies Code states 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 COUNTY and CITY under this chapter is limited to money damages in a maximum amount of \$250,000.00 for each person and \$500,000.00 for each single occurrence for bodily injury or death and \$100,000.00 for each single occurrence for injury to or destruction of property. Employees of the COUNTY and CITY are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

SECTION 8. SURETY

- (a) The COUNTY shall obtain and maintain at its sole cost a corporate surety bond securing performance of its obligations and guaranteeing faithful adherence to the requirements of this License Agreement. The surety bond must be:
 - (1) in an amount not less than \$100,000;
 - (2) issued by a surety company licensed to do business in the State of Texas; and
 - (3) acceptable to the City Attorney.
- (b) The COUNTY shall obtain this bond no later than the 30th day after the effective date of this License Agreement.
- (c) The rights reserved to the CITY under the bond are in addition to all other rights. No action, proceeding or exercise of a right regarding the bond shall affect the CITY'S rights to demand full and faithful performance under this License Agreement or limit the COUNTY's liability for damages.

SECTION 9. ADMINISTRATION OF LICENSE

- (a) The City Manager or her designee is the principal CITY officer responsible for the administration of this License Agreement.
- (b) The COUNTY shall coordinate with the Right-of-Way Director all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of Conduit, Fiber Optic Cable, and other Facilities.
- (c) Notices required by this License Agreement may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either Party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to CITY shall be delivered as follows:

Director of Capital Improvements
Management Services
Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78204
(210) 207-8140

City Attorney's Office
City of San Antonio
P.O. Box 839933
San Antonio, Texas 78283-3933
(210) 207-7253

Until any such change is made, notices to the COUNTY shall be delivered as follows:

Bexar County Commissioners Court
Paul Elizondo Tower
101 W. Nueva, 10 th Floor
San Antonio, Texas 78205
Attn: Bexar County Judge
With a copy to:
Bexar County Chief Information Officer
203 W. Nueva
San Antonio, Texas 78207

SECTION 10. ASSIGNMENT OF LICENSE AGREEMENT

The rights granted by this License Agreement inure to the benefit of the COUNTY and shall not be assigned, transferred, sold or disposed of, in whole or in part, by voluntary sale, merger, consolidation or otherwise by force or involuntary sale, without the expressed written consent of the CITY, approved by passage of an ordinance. For the purposes of this Section, assignment, transfer, sale, disposal, merger or consolidation shall exclude an assignment or transfer to entities that control, are controlled by, or are under common control with the COUNTY. Any such consent by the CITY shall not be unreasonably withheld.

SECTION 11. VENUE AND GOVERNING LAW

- (a) **VENUE OF ANY COURT ACTION BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS LICENSE AGREEMENT SHALL BE IN BEXAR COUNTY, TEXAS. THE PROVISIONS OF THIS LICENSE AGREEMENT SHALL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER SHALL BE PERFORMED IN BEXAR COUNTY, TEXAS.**
- (b) This License Agreement shall be construed in accordance with the CITY Charter and Municipal Codes in effect on the date of passage of this License Agreement, and as may be subsequently amended, to the extent that such Charter and Codes are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

SECTION 12. SEVERABILITY

If any clause or provision of the License Agreement is held by any court having jurisdiction to be illegal, invalid, or unenforceable under present or future laws effective during the term of this License Agreement, then and in that event it is the intention of the Parties hereto that the remainder of this License Agreement shall not be affected thereby,

and it is also the intention of the Parties that in lieu of each clause or provision of this License Agreement that is held by any court having jurisdiction to be illegal, invalid, or unenforceable, there be added as part of this License Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

SECTION 13. AUTHORITY

The signer of this License Agreement for the COUNTY hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of the COUNTY. The signer of this License Agreement for the CITY hereby represents and warrants that he or she has full authority to execute this License Agreement on behalf of the CITY.

SECTION 14. NON-WAIVER OF RIGHTS

By entering this License Agreement, neither the CITY nor the COUNTY has waived any rights they may have under applicable state and federal law pertaining to the provision of telecommunications services.

SECTION 15. COUNTERPARTS

The Parties may execute this License Agreement in separate counterparts hereto and each counterpart, when so executed and delivered, will constitute an original instrument, and all such separate counterparts will constitute but one and the same instrument.

EXECUTED IN DUPLICATE ORIGINALS, EACH OF WHICH SHALL HAVE THE FULL FORCE AND EFFECT OF AN ORIGINAL, ON THE EFFECTIVE DATE OF THIS LICENSE AGREEMENT.

SECTION 16. ENTIRE AGREEMENT

This License Agreement with attached Exhibits A constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements. This License Agreement may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no representations or understandings of any kind not set forth herein. Any amendments to this License Agreement must be in writing, executed by both Parties, and by the San Antonio City Council.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO

Hugh Miller
Chief Technology Officer

APPROVED AS TO FORM

Martha G. Sepeda, Acting City Attorney

COUNTY OF BEXAR

NELSON W. WOLFF
County Judge

Attest:

GERARD RICKHOFF
County Clerk

APPROVED AS TO LEGAL FORM:

Paul E. Jackson
Bexar County Assistant Criminal
District Attorney-Civil Division

APPROVED AS TO FINANCIAL CONTENT:

SUSAN YEATTS
County Auditor

Dan Curry
Director, Facilities Management

DAVID SMITH
County Manager

EXHIBIT "A"
DESCRIPTION OF RIGHTS-OF-WAY

DRAFT