

ORDINANCE 2019-11-14-0960

APPROVING A NON-EXCLUSIVE 10-YEAR LICENSE AGREEMENT GRANTING TEXAS LAUREL RIDGE HOSPITAL THE USE AND OCCUPANCY OF CITY RIGHT-OF-WAY FOR INSTALLING AND MAINTAINING FIBER OPTIC CABLE FACILITIES TO EXTEND HOSPITAL'S PRIVATE NETWORK TO EXPANDED CAMPUS LOCATIONS.

* * * * *

WHEREAS, Texas Laurel Ridge Hospital (LRH) desires the use of certain right-of-way within the City of San Antonio for the purpose of installing and maintaining fiber optic cable facilities to extend LRH's private network among their campus locations; and

WHEREAS, the proposed fiber optic cable facilities will cross over or under the City's right-of-way to provide communications connectivity to 17903 Corporate Woods Drive between Redriver Song and North Loop 1604 West, and as depicted in greater detail within the Licensee Agreement attached as **Exhibit A**; and

WHEREAS, the installation, maintenance, and repair of fiber optic cable facilities over or under the public right-of-way will be done in a manner consistent with all City of San Antonio regulations, including the Right-of-Way Management Ordinance and Utility Excavation Criteria Manual; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The License Agreement between the City of San Antonio and Texas Laurel Ridge Hospital is approved in substantially the same form as it appears in **EXHIBIT A**.

SECTION 2. The City Manager or designee is hereby authorized to execute the License Agreement and any and all documents necessary to fulfill the purpose and intent of this Ordinance.

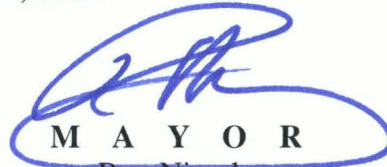
SECTION 3. Funds generated by this Ordinance will be deposited as per the table below:

Amount	General Ledger	Internal Order	Fund
\$4,353.12	4202440	209000000045	74001000

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.


SECTION 5. This Ordinance becomes effective immediately upon its passage by eight (8) affirmative votes of the City Council. If less than eight (8) affirmative votes are received, then the Ordinance shall be effective ten (10) day after passage.

PASSED AND APPROVED, this 14th day of November, 2019.



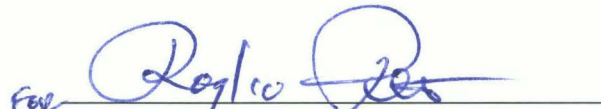
M A Y O R
Ron Nirenberg

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



For Andrew Segovia, City Attorney

Agenda Item:	14 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15A, 15B, 16, 17, 18, 19, 20, 21, 25, 26, 27, 28, 29)
Date:	11/14/2019
Time:	09:55:45 AM
Vote Type:	Motion to Approve
Description:	Ordinance approving a license agreement with Laurel Ridge Hospital for the use of city rights-of-way for the installation of a communications network. Revenue generated by this ordinance is estimated at \$4,353 over a 10-year period, the revenue generated deposited into the Information Technology Service Department Fund in accordance with the FY 2020 Adopted Budget. [Ben Gorzell, Chief Financial Officer; Craig Hopkins, Chief Information Officer, Information Technology Services]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				
Jada Andrews-Sullivan	District 2		x				
Rebecca Viagran	District 3		x				x
Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x			x	
Clayton H. Perry	District 10		x				

EXHIBIT A

NON-EXCLUSIVE LICENSE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND TEXAS LAUREL RIDGE HOSPITAL, LP FOR USE OF PUBLIC RIGHT-OF-WAY

This License Agreement (“License Agreement”) is made by and between the **CITY OF SAN ANTONIO, TEXAS** (hereafter referred to as “CITY” or “Licensor”), a Texas Municipal Corporation and Home-Rule Municipality, acting by and through its City Manager, or designee, pursuant to Ordinance No. _____, passed and approved by the City Council on _____, 20__; and **TEXAS LAUREL RIDGE HOSPITAL, LP**, a Texas limited partnership (hereafter referred to as “LRH” or “Licensee”). The CITY and the LRH may hereinafter be referred to collectively as the “Parties”.

WHEREAS, LRH desires the use of certain public right-of-way within the CITY as described in **EXHIBIT A** for the purpose of installing and maintaining fiber optic cable Facilities as defined by this License Agreement; and

WHEREAS, the installation, maintenance, and repair of fiber optic cable facilities under the public right-of-way will be done in a manner consistent with all City of San Antonio regulations, including the City’s Right-of-Way Management Ordinance and Utility Excavation Criteria Manual; and

WHEREAS, the fee schedule for use of the City’s Right-of-Way is set forth in **EXHIBIT B**;

NOW THEREFORE THE ABOVE 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) “CITY” means the City of San Antonio, Texas, a home-rule municipality.
- (b) “Chief Information/Technology Officer” means the director of the Information Technology Services Department.
- (c) “Director” means the Director of Transportation & Capital Improvements Department.

- (d) "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) pursuant to the authority granted by the Right-of-Way Management Ordinance.
- (e) "Facilities" means any and all of LRH's fiber optic cables, conduits, and related equipment necessary for the installation of fiber optic cables and related equipment over or under the Right-of-Way as identified and described in the License Agreement.
- (f) "Right-of-Way" or "Public Right-of-Way" means the surface of, and the space above and below, any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement now or hereafter-held by the CITY or over which the CITY exercises any rights of management control.
- (g) "Right-of-Way Management Ordinance" means the San Antonio Right-of-Way Management Ordinance passed by the San Antonio City Council on January 25, 2001 as Ordinance No. 93319, as codified in Chapter 29 of the CITY's Municipal Codes, and as amended.
- (h) "Right-of-Way Manager" means the Manager of the Right-of-Way Management Division of the Transportation & Capital Improvements Department.

SECTION 2. GRANTING CLAUSE

- (a) The CITY hereby grants LRH, a non-exclusive license to use and occupy the space above or below those portions of the CITY's Right-of-Way as particularly described in **EXHIBIT A** to this License Agreement in order to install, construct, replace, and maintain all necessary Facilities as that term is defined herein. The shorthand name of the Facilities locations are known as _____ . The location is described with particularity in **EXHIBIT A**, which is attached to this License Agreement and made a part hereof for all purposes.
- (b) LRH's use of the Right-of-Way shall be subject to the terms of the CITY's Right-of-Way Management Ordinance, the CITY's Utility Excavation Manual, the laws of the State of Texas, and the CITY's charter and ordinances, as they exist now or may be amended from time to time.

SECTION 3. TERM

The License term and the rights, privilege and authority hereby granted shall be in

full force and effect beginning upon final execution of this License Agreement, and shall continue in effect for an Initial Term of ten (10) years.

SECTION 4. LICENSE RENEWAL PROCEDURES

- (a) Upon application by LRH, this License Agreement may be renewed by the CITY for up to two (2) separate five (5) year Renewal Terms pursuant to the procedures established in this Section, and in accordance with the applicable laws, regulations, and rules of the State of Texas and the City of San Antonio.
- (b) At least six (6) months prior to the expiration of the then-current term of the License Agreement, LRH shall inform the Chief Information/Technology Officer in writing of its intent to seek renewal of the License Agreement. During this time period, the Chief Information/Technology Officer may order a new appraisal of the Right-of-Way used by LRH, but no other terms of this License Agreement may be altered unless expressly authorized herein or unless mandated by ordinance or other law. A processing fee will apply to a renewal of the License Agreement.

SECTION 5. INDEMNITY

- (a) **GENERAL INDEMNITY CLAUSE – LICENSEE COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of resulting from or related to the Licensee’s activities under this Agreement, including any acts or omissions of the Licensee, any agent, officer, director, representative, employee, vendor or subcontractor of the Licensee, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IF THE LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. The Licensee shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or the Licensee known to the Licensee related to, or arising out of the Licensee's activities under this Agreement and shall see to the investigation and defense of such claim or demand at the Licensee's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving the Licensee(s) of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by the Licensee in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. The Licensee shall retain CITY approved defense counsel within ten (10) business days of CITY'S written notice that CITY is invoking its right to indemnification under this License Agreement. If the Licensee fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and the Licensee shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of Licensee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Licensee or any subcontractor under worker's compensation or other employee benefit acts.

- (b) Licensee shall be liable for the acts and omissions of its own employees, officers, directors, and any contractors, subcontractors, representatives, agents, or any parties involved directly or indirectly in the construction, installation, maintenance of Licensee's Facilities and proprietary poles. Any act or omission of non-employees, officers, and directors shall be considered an act or omission of the Licensee.
- (c) **Duty to Indemnify Licensor Against Claims Arising from License Agreement.** Licensee shall defend, indemnify and hold the City and its officers, employees, and appointed and elected officials harmless against all damages, cost, loss or expense arising out of, incident to, directly or proximately resulting from the negligence or willful misconduct of Licensee, its employees, officers, directors, contractors, subcontractors, agents, or representatives in the performance of activities under this License Agreement for:

- (1) the repair, replacement, or restoration of City property, equipment, materials, structures, and facilities which are damaged, destroyed, or found to be defective;
 - (2) damage to or loss of the property of any person including, but not limited to Licensee, its agents, officers, employees and subcontractors, the City's agents, officers and employees, and third-parties; and
 - (3) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person no matter how, or to whom, the loss may occur.
- (d) **Licensor's Duty to Notify Licensee of Claims** – CITY shall give prompt written notice to Licensee of any claim for which the CITY seeks indemnification. Licensee shall have the right to investigate, defend, and compromise these claims subject to the City Attorney's prior approval. Said approval shall not be unreasonably withheld.
- (e) **Licensor's Consent to Settle Claims** – Licensee may not settle any claim subject to this Section without the consent of CITY, unless (i) the settlement will be fully funded by Licensee, and (ii) the proposed settlement does not contain an admission of liability or wrongdoing by any elected officials, employees, officers, directors, volunteers or representatives of CITY. The CITY's withholding its consent as allowed in the preceding sentence does not release or impair Licensee of any obligations under this Section. Licensee must give CITY at least twenty (20) days advance written notice of the details of a proposed settlement before it becomes binding. Any settlement purporting to bind CITY must first be approved by City Council.
- (f) **EXCLUSION OF DAMAGES – LICENSOR SHALL NOT BE LIABLE TO LICENSEE, OR ITS CUSTOMERS, AGENTS, REPRESENTATIVES, OR EMPLOYEES FOR ANY CLAIMS ARISING FROM THIS LICENSE AGREEMENT FOR LOST REVENUE, LOST PROFITS, LOSS OF EQUIPMENT, INTERRUPTION OR LOSS OF SERVICE, LOSS OF DATA; OR FOR INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE.**

SECTION 6. INSURANCE REQUIREMENTS

- (a) Prior to the commencement of any work under this License Agreement, the Licensee shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Information Technology Services Department, which shall be clearly labeled "*Texas Laurel Ridge Hospital*,

LP License Agreement for Use of Public Right-of-Way” in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent’s original signature, including the signer’s company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the CITY. The CITY shall have no duty to pay or perform under this License Agreement until such certificate and endorsements have been received and approved by the CITY’s Information Technology Services Department. No officer or employee, other than the CITY’s Risk Manager, shall have authority to waive this requirement.

- (b) CITY reserves the right to review the insurance requirements of this Section during the effective period of this License Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the CITY’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will CITY allow modification whereupon the CITY may incur increased risk. Such review and modification shall not occur more frequently than every five (5) years.
- (c) The Licensee’s financial integrity is of interest to the CITY; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this License Agreement, and any extension hereof, at the Licensee’s sole expense, insurance coverage written on an occurrence basis, through self-insurance, or by companies authorized and admitted to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For Bodily Injury and Property Damage of \$3,000,000 per occurrence; \$5,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
5. Professional Liability (Claims-made basis)	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages

To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	by reason of any act, malpractice, error, or omission in professional services.
6. Fidelity or Commercial Crime Insurance Employee Dishonesty Policy – City will be named as Loss Payee	\$100,000

- (e) The Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the CITY, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the CITY is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the CITY; and
 - Upon receipt of notice from its insurer, Licensee will provide Licensor with thirty (30) days prior written notice of cancellation.
- (f) Within thirty (30) calendar days of a suspension, cancellation or non-renewal of coverage, the Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to the CITY. The CITY shall have the option to suspend the Licensee's performance should there be a lapse in coverage at any time during this License Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this License Agreement.
- (g) In addition to any other remedies the CITY may have upon the Licensee's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order the Licensee to stop work hereunder, and/or withhold any payment(s) which become due to the Licensee hereunder until the Licensee demonstrates compliance with the requirements hereof.
- (h) Nothing herein contained shall be construed as limiting in any way the extent to which the Licensee may be held responsible for payments of damages to persons or property resulting from the Licensee's or its subcontractors' performance of the work covered under this License Agreement.

- (i) It is agreed that the Licensee's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this License Agreement.
- (j) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License Agreement.
- (k) The Licensee and any subcontractors are responsible for all damage to their own equipment and/or property.

SECTION 7. ADMINISTRATION OF LICENSE

- (a) The City Manager or her designee is the principal CITY officer responsible for the administration of this License Agreement. The Right-of-Way Manager shall review the operations of LRH in the Right-of-Way under this License Agreement.
- (b) LRH shall remit payment of all fees associated with this License Agreement to the address indicated below:

City of San Antonio
 Revenue Collections
 PO BOX 839975
 San Antonio, TX 78283

- (c) LRH shall communicate with the Right-of-Way Manager all matters in connection with or affecting the installation, construction, reconstruction, maintenance and repair of LRH's Facilities in the Right-of-Way and report any material changes regarding LRH's Facilities.
- (d) 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. Notices given in this manner shall be effective as of the date of deposit thereof in the United States Mail. 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 Improvements Services Department City of San Antonio P.O. Box 839966 San Antonio, Texas 78204	of Management	Capital City Clerk's Office City of San Antonio P.O. Box 839933 San Antonio, Texas 78283-3933 (210) 207-7253
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(210) 207-8140

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

Laurel Ridge Hospital, LP
17903 Corporate Woods Drive
San Antonio, Texas 78259
610-382-4703
Attn: Trey Weathers

Copies of petitions, applications, communications and reports submitted by LRH to the Federal Communications Commission or the Public Utility Commission of Texas concerning or affecting this License Agreement shall be provided to the CITY concurrently with the filing of such documents.

SECTION 8. RECORDS

- (a) LRH shall keep complete and accurate maps and records of its Facilities. The CITY may require the keeping of additional records or maps which are reasonably necessary for purposes of identifying, accounting for, and reporting changes in Facilities.
- (b) The CITY may, at reasonable times and for reasonable purposes, examine, verify and review the non-proprietary and non-confidential documents, maps, plans and other records of LRH pertaining to the Facilities installed in the Right-of-Way. LRH shall make the above records available to the CITY for review within ten (10) working days after requested by the Director or Right-of-Way Manager.

SECTION 9. COMPENSATION FOR USE OF RIGHT-OF-WAY

In exchange for the use and occupancy of the Public Right-of-Way, LRH shall be required to pay the fees as set forth in this Agreement and shown in **EXHIBIT B**, which is attached to this License Agreement and made a part hereof for all purposes:

- (a) **Processing Fee.** LRH shall remit to the CITY a one-time processing fee of three thousand five hundred dollars (\$3,500.00) prior to final approval by the director.
- (b) **Right-of-Way Access Fees.**
 - (1) The annual consideration amount for use of public Right-of-Way for the purpose of installing aerial and/or subterranean fiber optic and related communications facilities is based on the fair market value of the Right-of-Way used by LRH ("Right of Way Access Fee"). The licensed area must be as wide as LRH will reasonably need to maintain the licensed Facilities but not more than

twenty (20) feet. The Chief Information/Technology Officer in his discretion may utilize internal staff or engage an independent professional consultant to conduct an appraisal of the Right-of-Way subject to this License Agreement, based on the appraised values of adjoining properties as assessed by the Bexar County Appraisal District. LRH will be responsible for paying the Right-of-Way appraisal separate from the processing fee. The Chief Information/Technology Officer has determined the fair market value based on a per-linear-foot basis of the Right-of-Way area associated with the LRH's network footprint. An annual escalation factor of four (4) percent has been applied to the consideration amount for year one in order to derive the consideration amount for years two (2) to ten (10) of the license term. At the discretion of the Chief Information/Technology Officer, the CITY may negotiate a discount off the total licensing fee in exchange for in-kind contributions of equivalent value. The Right-of-Way Access Fee has been determined according to the process above and is shown in **EXHIBIT B**.

(2) The licensing fee will authorize LRH to install Facilities on CITY Right-of-Way, but does not grant authority to use poles or other infrastructure of the CITY or utility agencies. The Chief Information/Technology Officer may require LRH to sign and deliver an agreement setting out the applicable license fee and conditions imposed by CITY departments and utility agencies. When reasonably conducive to the efficient use of the property on which Facilities are located, the Chief Information/Technology Officer may require LRH to relocate the Facilities, including all related equipment, at LRH'S expense.

(3) Following termination of this License Agreement for any reason, LRH must remove or otherwise dispose of all Facilities at its' own expense within sixty (60) days. Failure to take this action will result in the Facilities being considered abandoned and the property of the CITY.

(c) **Right-of-Way Access Fees Due Annually.** LRH shall remit the Right-of-Way access fees on an annual basis. First payment of the Right-of-Way Access Fee shall be due on the first day of the month after the date of execution of this Agreement by both parties and shall be due on the same date annually thereafter. Each payment shall be accompanied by a statement explaining that the payment is made pursuant to this License Agreement.

(d) Following termination of this License Agreement for any reason, LRH must remove or otherwise dispose of all Facilities at its own expense within sixty (60) days. Failure to take this action will result in the Facilities being considered abandoned and the property of the CITY.

SECTION 10. ASSIGNMENT OF LICENSE AGREEMENT

The rights granted by this License Agreement inure to the benefit of LRH and this

License Agreement 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 LRH. Any such consent by the CITY shall not be unreasonably withheld.

SECTION 11. FUTURE CONTINGENCY

Notwithstanding anything contained in this License Agreement to the contrary, in the event that this License Agreement, in whole or in part, is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, LRH and the CITY shall meet and negotiate an amended License Agreement that is in compliance with the authority's decision or enactment and, unless explicitly prohibited, the amended License Agreement shall provide the CITY with a level of compensation comparable to that set forth in this License Agreement.

SECTION 12. 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 THE 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 Code(s) in effect on the date of passage of this License Agreement, and as may be subsequently amended, to the extent that such Charter and Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas.

SECTION 13. LICENSE AGREEMENT VIOLATIONS AND TERMINATION

The Director shall have the right to declare this License Agreement terminated at any time for failure of LRH to comply with any term, condition, or provision of the License Agreement, including a challenge of this License Agreement, as further provided below.

- (a) If LRH initiates a challenge, legal or otherwise, to the validity of any part of this License Agreement, the entire agreement, all permits and permit applications to use

Public Right-of-Way or a municipal facility is declared null and void as of the challenge date.

- (b) LRH shall inform the CITY no later than the second day after initiating such a challenge. Failure to provide the CITY with notice constitutes a material breach of the License Agreement.
- (c) LRH must remove all Facilities installed in Public Right-of-Way, or in, on, or around any CITY facility or property wherever located by no later than the 60th day after initiating the challenge.
- (c) The CITY may remove any of LRH's Facility that remain in or around Public Right-of-Way or CITY facility or property on or after the 61st day following LRH'S challenge without incurring liability for the removal.
- (d) As to violations, other than a challenge of the License Agreement, LRH will have an opportunity to cure following notice from the CITY. If LRH fails to cure a violation within thirty (30) days after receiving written notice, then the CITY may pursue termination of this License Agreement.
- (e) Any termination, other than for a challenge to the License Agreement, shall be declared in writing by the Director following an opportunity to cure a violation of the License Agreement.
- (f) LRH shall not be excused from complying with any of the terms and conditions of this License Agreement by the previous failure of the CITY to insist upon or seek compliance with such terms and conditions.

SECTION 14. NON-BINDING MEDIATION

- (a) Prior to filing suit, the parties to this License Agreement shall use non-binding mediation to resolve any controversy, claim or dispute arising under the License Agreement, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this License Agreement or the preemptive effect of federal law.
- (b) To initiate non-binding mediation, a Party shall give written notice to the other Party. In the mediation process, the Parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the Parties. If the Parties cannot agree on a mediator, a mediator shall be designated by JAMS at the request of a Party. Any mediator so designated shall be acceptable to both Parties.
- (c) The mediation will be conducted as specified by the mediator and agreed upon by

the Parties. The Parties agree to discuss their differences in good faith and to attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.

- (d) The mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code § 154.073. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.
- (e) Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

SECTION 15. WAIVER

None of the material provisions of this License Agreement may be waived or modified except expressly in writing signed by LRH and CITY, as authorized by City Council by passage of an ordinance. Failure of either Party to require the performance of any term in this License Agreement or the waiver by either Party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be deemed a waiver of any subsequent breach.

SECTION 16. SEVERABILITY

If any clause or provision of the License Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this License Agreement, 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 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 17. CAPTIONS

The captions contained in this License Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this License Agreement.

SECTION 18. EXTENT OF LICENSE AGREEMENT

This License Agreement, together with any attached exhibits and the authorizing ordinance, embodies the complete agreement of the Parties, superseding all oral or written previous and contemporary agreements between the Parties and relating to this Agreement.

SECTION 19. MODIFICATION

This License Agreement may not be changed orally and no modification, amendment, or waiver of any provision contained in this License Agreement, or any future representation, promise or condition in connection with the subject matter of this License Agreement shall be binding upon any party hereto unless made in writing, approved by the City Council, and signed by both Parties.

The City Manager, her designee, or the Chief Information/Technology Officer shall have the authority to enter into an amendment of this License Agreement without further action by the City Council in order to: 1) make adjustments to the location and length of the fiber cable installations identified herein and to recalculate the Right-of-Way Access Fee in accordance with such adjustments; and 2) renew this License Agreement in accordance with the license renewal procedures provided herein.

SECTION 20. AUTHORITY

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

[Signature Page Follows]

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

**CITY OF SAN
ANTONIO**

**TEXAS LAUREL RIDGE
HOSPITAL, LP**

(Signature)



(Signature)

Printed Name:

Printed

Name:

Trey Weathers

Title:

Title:

Asst. Director, Design & Construction

Date:

Date:

9/3/19

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

**Metes and Bounds Locations of Fiber Optic Cable
Crossings**



June 27, 2019

Ms. Carmen Cardenas
City of San Antonio
1901 S. Alamo
San Antonio, TX 78204

Re: Laurel Ridge Treatment Center – Right-Of-Way Encroachment
AP No. 2429916

Dear Ms. Cardenas:

The purpose of this letter is to give further details on the type of encroachment requested for the project Laurel Ridge Treatment Center, Plat No. 070720 recorded in Volume 9582 Page 94.

The project is located at 17903 Corporate Woods Drive, between Redriver Song and North Loop 1604 West. In order to facilitate communication between the existing facility east of Corporate Woods Drive and the proposed treatment center, 2~3-inch conduits are proposed to cross beneath Corporate Woods Drive. The length of the conduits will be approximately 139-linear feet and will extend from a point outside of the right-of-way on the east side of Corporate Woods Drive (Northing: 13770163.89, Easting: 2146861.64) to a point outside of the right-of-way along the west side of Corporate Woods Drive (Northing: 13770090.37, Easting: 2146717.39).

We are requesting on Right-Of-Way encroachment in order to install the proposed buried conduits to facilitate communication for the proposed project, Laurel Ridge Treatment Center.

If you have any questions or require additional information, please do not hesitate to contact our office at your earliest convenience.

Sincerely,
Pape-Dawson Engineers, Inc.

Andrew Belton, P.E.
Project Manager

Attachments

P:\11402\10\Word\Letters\190627_EncroachmentLegalDescription.docx

TBPE Firm Registration #470 | TBPLS Firm Registration #10028800

San Antonio | Austin | Houston | Fort Worth | Dallas

Transportation | Water Resources | Land Development | Surveying | Environmental

2000 NW Loop 410, San Antonio, TX 78213 T: 210.375.9000 www.Pape-Dawson.com

EXHIBIT B

**Access Fee Schedules for the Fiber Optic Cable
Crossings**

Right-of-Way Access Fee Schedule for Texas Laurel Ridge

Site Name	LF	ROW Width	Total SF	Appraised Value (\$)	EFMV %	Easement SF	FMV*ROW Width	ROW Access Fee
TX Laurel Ridge	139	1	139	\$5.68	9%	\$ 0.51	\$0.51	\$71.06
			0			\$ -	\$0.00	\$0.00
			0			\$ -	\$0.00	\$0.00
								\$71.06

Metes and Bounds: sketch needed

ROW Access Fee	
\$71.06	1st Year
\$73.90	2nd Year
\$76.86	3rd Year
\$79.93	4th Year
\$83.13	5th Year
\$86.45	6th Year
\$89.91	7th Year
\$93.51	8th Year
\$97.25	9th Year
\$101.14	10th Year
\$3,500	Admin Fee
\$4,353.12	