

ORDINANCE

2021-12-16-0989

AUTHORIZING A 10-YEAR LICENSE AGREEMENT GRANTING THE UNIVERSITY OF TEXAS AT SAN ANTONIO (UTSA) THE USE AND OCCUPANCY OF A CITY OF SAN ANTONIO ITSD CONDUIT SYSTEM FOR AN IN-KIND INSTALLATION OF 144 STRANDS OF FIBER BY UTSA THAT WOULD SUPPORT THE CITY OF SAN ANTONIO'S REDUNDANT CONNECTIVITY FOR THE DOWNTOWN CORRIDOR.

* * * * *

WHEREAS, as part of a long term vision and strategy to expand the University of Texas at San Antonio ("UTSA") downtown San Antonio campus, UTSA is constructing its new School of Data Science and National Security Collaboration Center ("SDC/NSCC") on property formerly owned by the City; and

WHEREAS, the City and UTSA recognized the long term benefit to both Parties that will be achieved through UTSA's Downtown Campus expansion, and UTSA is in the process of purchasing such property from City under that certain *Master Development, Purchase, and Sale Agreement* entered into by the Parties effective as of April 13, 2020; and

WHEREAS, the City currently owns and maintains an underground conduit system that will allow high-speed data optic fiber to be pulled through the conduit and meet the high-speed data connectivity needs of UTSA; and

WHEREAS, UTSA will extend its fiber optic network from its new campus to its legacy campus as part of its campus expansion project which requires high-speed data connectivity between SDC/NSCC and its existing Downtown Campus Facilities to ensure SDS/NSCC maintains state of the art technology required to operate the facilities; and

WHEREAS, no revenue will be received for this use, however, an in-kind agreement where UTSA will install a 144-strand fiber cable from a City of San Antonio manhole adjacent to 506 Dolorosa, passing through the new UTSA main communications room and ending in a City manhole on Nueva Street; **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 the University of Texas at San Antonio is hereby approved in substantially the same form as it appears in **ATTACHMENT I**.

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.

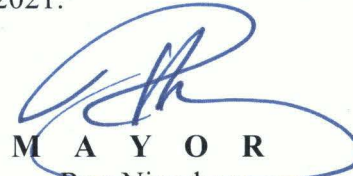
SECTION 3. No revenue will be received for this use, instead an in-kind installation of 144 strands of fiber by UTSA that would support the City of San Antonio's redundant connectivity for

the downtown corridor. The department will record an in-kind transaction for the services authorized by this ordinance.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer 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 is effective immediately upon receipt of eight affirmative votes; otherwise, it is effective 10 days after passage.


PASSED AND APPROVED this 16th day of December, 2021.


M A Y O R
Ron Nirenberg

ATTEST:


Debbie Racca-Sittre, Acting City Clerk

APPROVED AS TO FORM:

for 
Andrew Segovia, City Attorney



City of San Antonio

City Council Meeting December 16, 2021

36.

2021-12-16-0989

An Ordinance authorizing a 10-Year License Agreement granting The University of Texas at San Antonio (UTSA) the use and occupancy of a City of San Antonio ITSD conduit system for an in-kind installation of 144 strands of fiber by UTSA that would support the City of San Antonio's redundant connectivity for the downtown corridor. [Ben Gorzell, Chief Financial Officer; Craig Hopkins, Chief Information Officer]

Councilmember Courage moved to Approve on the Consent Agenda. Councilmember Cabello Havrda seconded the motion. The motion carried by the following vote:

Aye: Nirenberg, Bravo, McKee-Rodriguez, Viagran, Rocha Garcia, Castillo, Cabello Havrda, Sandoval, Pelaez, Courage, Perry

ATTACHMENT I

**MASTER LICENSE AGREEMENT FOR NON-EXCLUSIVE USE OF CITY
PROPERTY BETWEEN THE CITY OF SAN ANTONIO AND
THE UNIVERSITY OF TEXAS AT SAN ANTONIO**

This Use License Agreement (“**License Agreement**”) is made by and between the CITY OF SAN ANTONIO, TEXAS (“**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_____, 2021; and THE UNIVERSITY OF TEXAS AT SAN ANTONIO (“**University**” or “**Licensee**”), an institution of higher education and agency of the state of Texas. The City and University may hereinafter be referred to collectively as the “**Parties**”.

WHEREAS, as part of a long term vision and strategy to expand University’s downtown San Antonio campus, University is constructing its new School of Data Science and National Security Collaboration Center (“**SDC/NSCC**”) on property formerly owned by the City;

WHEREAS, the Parties recognized the long term benefit to both Parties that will be achieved through University’s Downtown Campus expansion, and University is in the process of purchasing such property from City under that certain *Master Development, Purchase, and Sale Agreement* entered into by the Parties effective as of April 13, 2020;

WHEREAS, University requires high-speed data connectivity between SDC/NSCC and its existing Downtown Campus Facilities to ensure SDS/NSCC maintains state of the art technology required to operate the facilities;

WHEREAS, the City currently owns and maintains an underground conduit system that will allow high-speed data optic fiber to be pulled through the conduit and meet the high-speed data connectivity needs of University;

WHEREAS, the City is able and willing to provide University the use of its conduit system for University’s fiber optic cable needs and for the mutual benefit of the Parties under the terms and conditions of this Agreement; and

WHEREAS, this License Agreement hereby sets forth rights, duties and obligations between the Parties in relation to the scope of this License Agreement;

NOW THEREFORE THE ABOVE PARTIES AGREE TO THE FOLLOWING:

SECTION 1. DEFINITIONS

For purposes of this License Agreement the following terms will 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 "will" is always mandatory and not merely permissive.

- (a) “**City**” means the City of San Antonio, Texas, a home-rule municipality.
- (b) “**City’s Chief Information/Technology Officer**” means the Director of the Information Technology Services Department.

- (c) **"City Property"** means the City-owned building located at 315 S. Santa Rosa Ave., San Antonio, Texas 78207.
- (d) **"Conduit System"** means all of City's conduit, ducts, spaces, manholes, underground passageways and related structures, and where the University's Fiber System will be located, all as more particularly depicted in **Exhibit A**.
- (e) **"Director"** means the Director of Public Works Department.
- (f) **"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.
- (g) **"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.
- (h) **"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 may be amended.
- (i) **"Right-of-Way Manager"** means the Manager of the Right-of-Way Management Division of the Public Works Department.
- (j) **"University's Fiber System"** means any and all of University's fiber optic cables, repeaters, and related technology located within the Conduit System.

SECTION 2. GRANTING CLAUSE

- (a) The City hereby grants University a non-exclusive license to access, use, and occupy the Conduit System to install, replace, protect, upgrade, remove, operate, and maintain University's Fiber System. The Conduit System locations are more particularly listed and shown in **Exhibit A**.
- (b) Nothing under this License Agreement will be interpreted to create or vest in Licensee any easement or other ownership or property interest to City Conduit and City Property. This License Agreement will not constitute an assignment of any Licensors' rights to City Property. Licensee will, always, be and remain a licensee only.
- (c) University's use of the Right-of-Way shall be subject to the laws of the State of Texas. In addition, University agrees that its 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, and the City's charter and ordinances, as they exist now or may be amended from time to time, and only as such City laws are applicable to the regulation of the Conduit System and the fiber systems therein.

- (d) **NO WARRANTY AND NO LIABILITY FOR NEGLIGENCE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE CONDUIT SYSTEM IS PROVIDED AS-IS. THE UNIVERSITY SHALL ASSUME ALL RISKS AND LIABILITY ARISING FROM OR RELATING TO THEIR USE OF AND RELIANCE UPON THE CONDUIT SYSTEM AND THE CITY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT THERETO. THE CITY AND ITS AGENTS SHALL NOT BE HELD LIABLE FOR THE NEGLIGENT ACTS OR OMISSIONS OF EMPLOYEES OR AGENTS THAT CAUSE DAMAGE TO THE UNIVERSITY'S FIBER SYSTEM.**
- (e) The Parties acknowledge and agree that the City will not be responsible for conducting preventative maintenance of the Conduit System or the fiber system therein, including maintenance to prevent damage from acts of nature or rodent infiltration. **CITY SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE TO UNIVERSITY'S FIBER SYSTEM ARISING FROM A LACK OF PREVENTATIVE MAINTENANCE, ACTS OF NATURE, AND/OR FROM RODENT INFILTRATION OF THE CONDUIT SYSTEM.** If the Conduit System is damaged due to a lack of preventative maintenance, acts of nature, and/or rodent infiltration, the City shall work to promptly repair such damage to the Conduit System and University shall be responsible for repairing any related damage to University's Fiber System.
- (f) This License is issued by the City and accepted by University with the understanding that, if at any time City Conduit in and under City Property is determined in City's reasonable judgment to be incompatible with City's existing use of City Property or future use as required by City Council, University will cure any such incompatibility by modifying University's Fiber System, or by removing University's Fiber System if necessary, or by taking whatever other action which in City's reasonable judgment is necessary to be compatible with City's existing use of City Property or future use of City Property as required by City Council. City Conduit installed at the same locations as set out in Exhibit A of this License Agreement is also subject to the provisions of this section and City must modify, remove, or take whatever other action the City reasonably requires University to undertake. Each Party will bear its own costs in modifying or removing their respective facilities. With respect to any request by the City for University to remove or relocate University's Fiber System, University will have up to 60 days to comply, or such longer period as the City may agree to in its sole judgment, provided University is diligently pursuing such relocation or removal, including any necessary corresponding re-route of University's Fiber System.

Should University be required relocate, modify, or remove University's Fiber System under the requirements of this section, then City and University will negotiate in good faith to address the impact of the relocation, modification, or removal of University's Fiber System and determine a reasonable solution for the same. In such a case, City and University would collaborate in good faith to understand options and implement solutions that best support both interests. Neither party will unreasonably withhold its approvals during such negotiation, with both Parties understanding that this Agreement is intended for public benefit and therefore the mutual benefit of the Parties.

SECTION 3. TERM

The License term and the rights, privilege and authority hereby granted will be in force and effect for a term beginning upon final execution of this License agreement and will continue in effect for a term of ten (10) years.

SECTION 4. LICENSE RENEWAL PROCEDURES; FIBER SYSTEM AT EXPIRATION

- (a) This License Agreement may be renewed for up to three (3) additional Renewal Terms of five (5) years each upon mutual written agreement of the City and University. All the provisions of the License Agreement shall remain in effect during Renewal Terms.
- (b) Following termination of this License Agreement for any reason, University must remove from the Conduit System all components of University's Fiber System at its own expense within ninety (90) days after such expiration or termination. Failure to take this action will result in the University Fiber System being considered abandoned and the property of the City.

SECTION 5. CONSIDERATION FOR USE OF CONDUIT SYSTEM

In exchange for the use and occupancy of the Conduit System, University will provide City with the following:

- (a) University shall install 144 strand QSP Single Mode fiber strands for the City's exclusive use ("City Fiber") in all locations where University's Fiber System is installed in Conduit System. City Fiber is more particularly listed and shown in **Exhibit B**. City Fiber will be installed to the standards prescribed by the City's ITSD department. University shall be responsible for terminating, labeling, and testing City Fiber. Notwithstanding anything to the contrary contained in this License Agreement, University will have no other liability or obligation with respect to City Fiber. Following the installation of City Fiber, the City's use and maintenance of City Fiber shall be at its sole expense and responsibility. This provision will survive this License Agreement and City will be entitled to ownership of City Fiber during the Term and Renewal Terms of the License Agreement. Should the License Agreement be terminated prior to the end of the Term or a Renewal Term, the City Fiber will remain the property of the City. For clarity, University will own and control University's Fiber System. Should University desire to pull any aspect of University's fiber system from the Right of Way, University may do so at any time.
- (b) City Fiber will loop through the Main Distribution Frame ("MDF") of the University building located at 506 Dolorosa Street, San Antonio, Texas 78207, and University agrees to provide City access to the 506 Dolorosa Street building and the MDF to the extent necessary to use and maintain City Fiber.

SECTION 6. INDEMNITY

City is a political subdivision of the State of Texas, and University is an agency and institution of higher education of the State of Texas, and therefore University and City acknowledge that each is subject to and will comply with the applicable provisions of the Texas Tort Claims Act, as set out in 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.

SECTION 7. INSURANCE REQUIREMENTS

- (a) University and the CITY each maintain a self-insurance fund for general liability and worker's compensation claims and causes of action to meet their statutory obligations to each party's employees.
- (b) With respect to University, it is the stated policy of the State of Texas not to acquire commercial general liability insurance for torts committed by employees of the State 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 state government 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 University of Texas System are provided Workers' Compensation coverage under a self-insuring, self-managed program as authorized by the Texas Labor Code, Chapter 503.

SECTION 8. ADMINISTRATION OF LICENSE

- (a) The City Manager or her designee is the principal City officer responsible for the administration of this License Agreement. University's Chief Information Technology Officer (currently University's Vice President for Information Management and Technology) or her/his designees will be the principal University officer responsible for the administration of this License Agreement.
- (b) University will communicate with the City's Chief Information/Technology Officer or his assignee on all matters in connection with or affecting the installation, maintenance and repair of University's Fiber System in the City's Property and report any material changes to University's Fiber System, excluding emergency maintenance for a significant loss or disruption of network connectivity, or emergency repairs for the preservation of life or property when the necessity arises, provided that University will notify the City's Chief Information/Technology Office or his assignee within twenty-four (24) hours of the emergency maintenance or repairs.
- (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 will 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 will 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 Clerk'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 University will be delivered as follows:

The University of Texas at San Antonio
Attention: Senior Vice President for Business Affairs
One UTSA Circle
San Antonio, Texas 78249

The University of Texas at San Antonio
Attention: Senior Vice President for Business Affairs
One UTSA Circle
San Antonio, Texas 78249
Email: vpbaoffice@utsa.edu

SECTION 9. RECORDS

Both Parties will comply with the *Texas Public Information Act*, Chapter 552, *Texas Government Code*, and all applicable records retention policies. Both Parties will maintain the books and accounts relayed to the scope of this Agreement in accordance with records retention policies required under Chapter 441, *Texas Government Code*. Such books and records will be open and available for inspection by either Party upon the official request by the other Party, with 72 hours prior notice, during regular working hours between Monday and Friday during the Term of the Agreement.

SECTION 10. ASSIGNMENT OF LICENSE AGREEMENT

The rights granted by this License Agreement inure to the benefit of both Parties. This License Agreement will not be assigned or transferred, in whole or in part, by either Party by means of merger, consolidation, or otherwise by any manner controlled by the Party, without the expressed written consent of the other Party. City understands and acknowledges that University is a state agency and institution of higher education under the Board of Regents of The University of Texas System, and any assignment, transfer, disposal, merger or consolidation initiated by the State of Texas or Board of Regents is outside the control of University. Any consent required under this Section will 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, University and the City will 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 will provide both Parties with a level of consideration comparable to that set forth in this License Agreement.

SECTION 12. VENUE AND GOVERNING LAW

VENUE OF ANY COURT ACTION BROUGHT DIRECTLY OR INDIRECTLY BY REASON OF THIS LICENSE AGREEMENT WILL BE IN BEXAR COUNTY, TEXAS. THE PROVISIONS OF THE LICENSE AGREEMENT WILL BE CONSTRUED UNDER, AND IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER WILL BE PERFORMED IN BEXAR COUNTY, TEXAS.

SECTION 13. LICENSE AGREEMENT VIOLATIONS AND TERMINATION

- (a) The Director shall have the right to declare this License Agreement terminated at any time for failure of University to comply with any term, condition, or provision of the License Agreement.
 - (i) University will have an opportunity to cure following notice from the City. If University fails to cure a violation within thirty (30) days after receiving written notice, then the City may pursue termination of this License Agreement.
 - (ii) Any termination shall be declared in writing by the Director following an opportunity to cure a violation of the License Agreement. The termination will not be effective if the failure is fully cured prior to the end of the thirty-day period.
- (b) University 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 will 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 will 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, with neither party to unreasonably withhold its agreement.
- (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 will be a non-binding determination.
- (d) 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. AMENDMENT

None of the material provisions of this License Agreement may be waived or modified except expressly in writing signed by University and City, as authorized by City Council by passage of an ordinance, and as to University, if applicable, as authorized by The University of Texas System Board of Regents or The University of Texas System Administration.

SECTION 16. WAIVER

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 will not prevent subsequent enforcement of this term and will not be deemed a waiver of any subsequent breach.

SECTION 17. 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, then in that event it is the intention of the Parties hereto that the remainder of this License Agreement will 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 18. 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 19. 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 20. AUTHORITY

The signers of this License Agreement for both University and City hereby represent and warrant that he or she has full authority to execute this License Agreement on behalf of their respective Party.

[Signature page follows]

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

THE UNIVERSITY OF TEXAS AT SAN ANTONIO

(Signature)

DocuSigned by:
Veronica Mendez
0383B2F82A90417...

(Signature)

Printed Name: _____

**Chief Information/
Technology Officer**

Title: _____

Date: _____

Printed Name: _____

**Veronica Mendez
Sr. Vice President for
Business Affairs**

Title: _____

Date: _____

10/12/2021

Approved as to Form:

Assistant City Attorney

Exhibit A

The Conduit System path utilized by the University Fiber System



Exhibit B

City Fiber – In-Kind Fiber Installation



'In-Kind': 144 Strand OSP rated Single Mode Fiber

- Originate CoSA MH #1; include a 50 foot service loop in the manhole

- Route to UTSA MDF; include a 100 foot service loop in the UTSA MDF (DO NOT TERMINATE)

- Route thru new UTSA telecom manhole; include a 50 foot service loop

- Route thru existing CoSA telecom manhole; include a 50 foot service loop

- Route fiber via existing conduit to MH #5, include a 50 foot service loop at MH #5 (DO NOT TERMINATE)