

019432

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE LICENSE TO THE COUNTY OF EL PASO FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, USE AND REPAIR OF 540 LINEAR FEET OF ALL NECESSARY, DESIRABLE, SUBSURFACE WIRES, CABLES, UNDERGROUND CONDUIT, MANHOLES OR OTHER STRUCTURES AND APPURTENANCES IN CONNECTION WITH TELECOMMUNICATION SYSTEMS AND FIBER OPTIC, CONDUIT AND CABLES WITHIN A PORTION OF CITY RIGHT-OF-WAY UNDERNEATH CAMPBELL STREET AND FIRST AVENUE; SETTING THE LICENSE TERM FOR A TERM OF FIVE YEARS (5) WITH TWO (2) RENEWABLE FIVE (5) YEAR TERMS.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

SECTION 1. DESCRIPTION

The City of El Paso (hereinafter called "City") hereby grants a Special Privilege License (hereinafter called "License") to the **County of El Paso** (hereinafter referred to as the "Grantee"), to permit the construction, installation, maintenance, use and repair of five (5) manholes, and 3" conduit for fiber optics that will run 190 linear feet along Campbell Street and 350 linear feet along First Avenue for a total of 582 linear feet within a portion of public right-of-way as shown in *Exhibit "A"* which is made a part hereof for all purposes. Use of the City right-of-way shall be limited to the purpose of allowing the maintenance and repair of the fiber optics, communication cables, underground conduit, manholes, or other structures and appurtenances.

SECTION 2. LICENSE AREA

The subsurface rights granted herein under a portion of right-of-way along Campbell Street and First Avenue to maintain and repair fiber optics, communication cables, underground conduit, manholes or other structures and appurtenances are more particularly shown in Exhibit "A" which is made a part hereof for all purposes (hereinafter referred to as "License Area"). The cables, underground conduit, manholes or structures and appurtenances are to be installed within the parkway and sidewalk areas whenever feasible to reduce the necessity for pavement cuts and repairs to existing roadways while maintaining the five-foot separation from existing utilities. For the areas necessitating pavement cuts, the repairs and pavement cuts shall comply with the provisions of Chapter 13.04 (Street and Sidewalk Construction and Maintenance) and Chapter 13.08 (Excavations) of the El Paso City Code.

SECTION 3. PURPOSE

The only City right-of-way Grantee shall use pursuant to this License shall be License Area shown for the maintenance of the wires, cables, underground conduit described in Exhibit A attached hereto. Any use of the License Area other than in connection with the construction, use, maintenance, reconstruction, or modification of the existing fiber optics, communication cables, underground conduits or other structures and appurtenances is not authorized by this License. Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, his assigns or successors in interest, none of whom shall have a cause of action for damages upon revocation or termination of this License in accordance with the terms herein.

019432

ORDINANCE NO. _____

PSPN22-00007

This License shall not permit or be construed to permit any other private use of the City right-of-way that impairs its function as a City right-of-way. Except as provided herein, Grantee shall not construct any additional improvements, or make any additions or alterations on, above, or below the City right-of-way, without prior written consent of the El Paso City Council.

SECTION 4. REGULATION OF CONSTRUCTION

The work done by Grantee in placing, constructing, replacing, repairing, reconstructing, or maintaining the fiber optics, communication cables, underground conduits, manholes, or other structures and appurtenances shall be subject to and governed by all laws, rules and regulation of the City and State of Texas, Federal Communications Commission, and the U.S. Government that are applicable to the construction of the fiber optics, communication cables, underground conduits, manholes, or other structures and appurtenances. Work done in connection with the construction, repair and maintenance of such facilities is subject to the continuing police power of the City.

In the event that Grantee desires to reconstruct, repair, maintain, or replace the existing fiber optic, communication cables, underground conduits, or other structures and appurtenances built hereunder, Grantee shall obtain all applicable permits required by the City. Where proposed, any excavation or trenching and other construction in the City right-of-way shall be so carried out as to interfere as little as practical with the surface use of the City right-of-way in accordance with any lawful and reasonable direction given by or under the authority of the governing body of the City under the police and regulatory powers necessary to provide for public convenience. After installation of the fiber optic, communication cables, underground conduits, manholes, or other structures and appurtenances, Grantee shall restore the City right-of-way to the same condition as before any such boring, excavation, or trenching and to the reasonable satisfaction of the City, in accordance with applicable City specifications.

Grantee covenants and agrees that Grantee shall, at its own expense, repair all water lines, storm and sanitary sewer lines, service lines and water meters owned by the City that Grantee, its employees, contractors, agents or assigns, damage so that such repair of the water lines, storm and sanitary sewer lines and water meters shall comply with the approval of the City.

For any additional work, the Grantee shall provide a set of complete engineering plans to El Paso Water showing the proposed work along the cable and conduit route for review and approval prior to any construction work, installation, maintenance, repair, and replacement. All existing water, sanitary sewer mains, reclaimed water mains and appurtenant structures located within the vicinity of the proposed fiber optic telecommunication cable and conduit shall be shown on the engineering plans in plan and profile view with dimensions and elevations.

For eight (8) inch diameter and smaller El Paso Water mains, a minimum horizontal distance of six (6) feet from edge of pipe to edge of proposed fiber optic cables is required. For twelve (12) inch diameter and larger El Paso Water mains, a minimum horizontal distance of ten (10) feet from edge of pipe to edge of fiber optic cable is required. The Contractor shall expose all mains with a diameter of 12-inches and greater with a non-destructive method. The exposures shall be conducted at the areas where the proposed conduit will cross the existing main, as well as at areas at the discretion of El Paso Water-PSB.

019432

ORDINANCE NO. _____

22-1007-3000 | 1214628

El Paso County

RTA

PSPN22-00007

If crossing El Paso Water mains, a minimum vertical separation of two (2) feet is required between our existing mains and the fiber optic cable.

Warning markers shall be placed to describe the type of lines buried.

The El Paso Water will assist with the location of water and sanitary sewer mains in the field. Please call the TEXAS EXCAVATION SAFETY SYSTEM (DIG TESS) at 1-800-344-8377 to request the assistance of our Field Engineering Personnel with the location of the City of El Paso's water and sanitary sewer mains. Please call with at least a 48-hour advance notice to request the field location of the existing water and sanitary sewer mains and appurtenances.

All costs associated with the exposures, repair, relocation, adjustment, or replacement of the City of El Paso's water and sanitary sewer mains and appurtenances are the responsibility of the applicant. In the event of emergencies, Grantee shall contact the El Paso Water field dispatcher.

The City shall have the power at any time to order and require Grantee to remove and abate any portion of the fiber optics, communication cables, underground conduit, manholes, or other structures and appurtenances that is dangerous to life or property. Should Grantee, after notice, fail or refuse to comply within a reasonable time, the City shall have the power to remove or abate same, at the expense of Grantee. In the event City removes or abates the existing fiber optics, communications cables, underground conduits, manholes, or other structures and appurtenances as provided herein, Grantee shall not be compensated for the loss of the existing fiber optics, communication cables, underground conduit, manholes, or other structures and appurtenances, or revenues associated with the cables, nor shall the City be liable to the Grantee for any direct, indirect or consequential damages due to the removal or abatement of the cables.

SECTION 5. TERM

This Special Privilege shall be for a term of five (5) years from the effective date hereof, unless terminated earlier as provided herein. At the end of this term, the City shall have the unilateral option of renewing this Special Privilege for two (2) additional five (5) year terms upon the request of the Grantee. If Grantee wishes the City to renew this License, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this License. Should Grantee fail to submit such request for the renewal of this License to the City as herein required, the License shall expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require the terms, conditions, and provisions of this License be modified as a condition for renewing the grant of the encroachment within the License Area as permitted by this License.

SECTION 6. WORK DONE BY OTHERS

Throughout the term of this License, the City expressly reserves the right to install, repair, or reconstruct the City right-of-way used or occupied by Grantee, any streets or alleys and all ancillary public uses, usual and customary in connection with streets and alleys, expressly including but not limited to, drainage facilities and structures.

The City reserves the right, subject to further conditions described in this paragraph, to lay and permit to be laid, utility lines including, but not limited to, storm and sanitary sewer, gas, water, and other pipelines or cables and conduits, and to do and permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the governing body of the

ORDINANCE NO. _____

22-1007-3000 | 1214628

El Paso County

RTA

019432

PSPN22-00007

City in, across, along, over or under the City right-of-way occupied by Grantee, and to change any curb or sidewalk or the street grade of any street. The City shall notify Grantee of work to be performed as herein described. The City shall not be liable to Grantee for any damage resulting there from, nor shall the City be liable to Grantee for any damages arising out of the performance of any work by the City, its contractors or subcontractors, not willfully and unnecessarily occasioned; provided, however, nothing herein shall relieve any other persons or entities from liability for damage to the existing fiber optics, communication cables, underground conduit, manholes, or other structures and appurtenances. If the City requires Grantee to alter, change, adapt, or relocate the existing fiber optics, communication cables, underground conduit, manholes, or other structures and appurtenances, due to imminent public safety concerns, because of changes in the grade of the City right-of-way or in the location or manner of constructing a water pipe, sewer pipe or other underground or aboveground pipes owned by the City, Grantee shall make the alterations or changes as soon as practicable when ordered in writing by the City without claim for reimbursement or damages against the City. If these requirements impose a financial hardship upon Grantee, Grantee shall have the right to present alternative proposals for the City's consideration. If the City requires Grantee to remove, alter, change, adapt or relocate its existing fiber optics, communication cables, underground conduit, manholes, or other structures and appurtenances or any portion thereof to enable any other entity or person, except the City, to use, or to use with greater convenience, the City right-of-way, Grantee shall not be required to make such changes until such other entity or person shall have undertaken with solvent bond, to reimburse Grantee for any loss and expense which will be caused by or arise out of such removal, alteration, change, adaptation or conformance of the existing fiber optics, communication cables, underground conduit, manholes, or other structures and appurtenances; provided, however, the City shall not be responsible nor liable for such reimbursement.

SECTION 7. RESERVATION OF SURFACE, SUBSURFACE, AND AIRSPACE RIGHTS

The City reserves the right to use the surface or subsurface or airspace within the License Area for any public purposes allowed by law and deemed necessary by the City and to do or permit to be done any work in connection therewith which may be deemed necessary or proper by the City on, across, along, under or over said City right-of-way occupied by Grantee provided such use does not interfere with Grantee's use of the License Area. Whenever by reason of said work in connection with said purposes it shall be deemed necessary by the City to alter, change, adapt, conform or relocate portions of existing fiber optics, communication cables, underground conduit, manholes, or other structures and appurtenances, such alteration or change or relocation shall be made by Grantee when ordered in writing by the Traffic Engineer without any claim for reimbursement or damages against the City.

SECTION 8. CONSIDERATION

As consideration for this special Privilege License, the Grantee shall pay to the City THREE THOUSAND SEVEN HUNDRED TEN AND 00/100 DOLLARS (\$3,710.00) per year. The annual fee shall remain the same for a period of one year from the date of execution by the El Paso City Council and shall be subject to change after each one-year period the License remains in effect. The El Paso City Council retains the right to increase or decrease the annual fee specified in this License.

The City shall notify the Grantee of any proposed changes in fees as prescribed in Section 14 (Notice) of this License. This License is granted on the condition the Grantee pay for all costs associated with the fiber optics, communication cables, underground conduit or other structures

and appurtenances as well as all costs for the restoration of the License Area upon the termination of the License.

The first annual consideration shall be due and owing prior to the El Paso City Council approval of the License. Payment shall be in the form of a cashier's check or business check payable to "The City of El Paso" and delivered to the Planning and Inspections Department for remittance to the Financial Services Department. If the Special Privilege is disapproved by the El Paso City Council, a full refund of the payment shall be made by the Financial Services Department within fifteen (15) days of the denial action. Subsequent annual considerations shall be due the first day of the month in which the License has been granted by the El Paso City Council and remitted to the Financial Services Department.

The fee payment shall be exclusive of and in addition to all general municipal taxes of whatever nature, including, but not limited to, the ad valorem taxes, and assessments for public improvements except as hereinafter provided as may be enacted during the term of this License or any renewal. The fee established in this section shall not be affected by any relocation of Grantee's existing fiber optics, communication cables, underground conduits, or other structures and appurtenances required by the City pursuant to this License.

The fee payment shall be exclusive of and in addition to all costs of obtaining required permits, plans and other approvals as necessary to conform to all other applicable City Special Privileges and regulations.

SECTION 9. INSURANCE

Prior to commencement of any future construction, repairs, or maintenance operations during the term of this License, Grantee's contractors or agents shall provide the City with a certificate of insurance and shall maintain such insurance in effect during the time of construction. The City shall be named as an additional insured on all of the contractors or agents insurance policies that are required by this License. Failure to maintain insurance after receipt of notice of default and thirty (30) days to cure shall be a material breach of this License and a basis for termination of this License by the City.

Grantee's contractors or agents shall maintain liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of One Million and No/100 Dollars (\$1,000,000.00) per person, and Two Million and No/100 Dollars (\$2,000,000.00) for each single occurrence, and, in addition, will provide property damage liability insurance in a minimum one of any accident or other cause. These amounts are not a limitation upon the Grantee's Contractors or Agents agreement to indemnify and hold harmless.

Grantee's Contractors and Agents shall procure said insurance with a solvent insurance company authorized to do business in Texas. Such policy or certificate shall provide that the insurance cannot be canceled, modified or the amount of coverage change without thirty (30) days prior written notice to the Financial Services Department for cancellation based on non-payment of insurance premiums.

Grantee shall file a copy of insurance with the Financial Services Department and the Planning and Inspections Department.

ORDINANCE NO. _____

22-1007-3000 | 1214628

El Paso County

RTA

019432

PSPN22-00007

SECTION 10. INDEMNITY

The City acknowledges that the Grantee cannot agree to indemnification or damages provisions pursuant to its fiscal law policies. However, the Grantee will agree to include the following provisions in its agreements with contractors performing work on the Property under this Special Privilege.

The Contractor, its Agent or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF OR RELATED TO THE THIRD PARTY ACTIVITIES, even where such damage, injury, loss, illness, physical or mental impairment, loss of service, or death results from or involves NEGLIGENCE, or allegations of negligence on the part OF THE CITY, its officers, agents, or employees. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor or Agent every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. The Contractor or its Agent will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Company may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. The Contractor or its Agent will pay all judgments finally establishing liability of the City in actions defended by the Contractor or its Agent pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor or its Agent, and premiums on any appeal bonds. The City, at its election, will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor or its Agent's property from any cause.

SECTION 11. RIGHTS IN THE EVENT OF ABANDONMENT

As an express condition of this License, and not as a mere covenant, in the event Grantee abandons the existing fiber optics, communication cables, underground conduits, manholes or other structures and appurtenances or a portion thereof or ceases to use the fiber optics, communication cables, underground conduits, manholes or other structures and appurtenances for the purposes enumerated herein for any period of six (6) months or longer, other than the time elapsing between the Effective Date of this license and the completion of construction of the fiber optics, communication cables, underground conduits, manholes, or other structures and appurtenances, this License shall automatically terminate, free and clear of any right, title, or interest in Grantee without the necessity of any notice to Grantee or any re-entry by the City.

SECTION 12. CANCELLATION

Grantee shall have the option to terminate this License at any time upon giving the City written notice thirty (30) days in advance of such termination. In addition, the City shall have the option to cancel and terminate this License for failure of Grantee to comply with any material provision or requirement

ORDINANCE NO. _____

22-1007-3000 | 1214628

El Paso County

RTA

019432

PSPN22-00007

contained in this agreement after thirty (30) days written notice to Grantee. However, if said breach or failure to comply cannot be reasonably cured within thirty (30) days, if Grantee shall proceed promptly to cure the same with due diligence, the time for curing such failure to comply shall be extended for such period of time as may be deemed reasonably necessary by the City to complete such curing unless such breach involves public safety.

Upon termination of this License, prior to the expiration of the original term for any reason, Grantee shall remove its fiber optics, communication cables, underground conduits, manholes, or other structures and appurtenances located in the Licensed Area at no cost to the City. When said fiber optics, communication cables, underground conduits, manholes, or other structures and appurtenances is removed from the Licensed Area, Grantee shall restore the License Area during the term of this License, if any, at Grantee's own cost and expense, as determined by the City Engineer and in accordance with City specifications. Any such restoration shall be subject to the reasonable approval of the City. If the Grantee fails to restore the pavement as required by the City, the City may at its option restore the pavement and charge such costs to Grantee who shall be responsible for payment of such repair and restoration costs.

SECTION 13. RECORDS

The City Manager or designee shall be kept fully informed by Grantee as to matters pertaining in any way to Grantee's exercise of its right under this License, including the construction, replacement, reconstruction, maintenance, and repair of the fiber optics, communication cables, underground conduits, manholes, or other structures and appurtenances within the City right-of-way. Obtaining all applicable City permits shall be deemed sufficient to keep such parties informed. Grantee shall keep complete and accurate maps, construction drawings, and specifications describing the location of the fiber optics, communication cables, underground conduits, manholes, or other structures and appurtenances within the City right-of-way. The City shall have the right, at reasonable times to inspect such maps, construction drawings, and specifications.

SECTION 14. NOTICE

Any notice or communication required in the administration of this License shall be sent in writing by prepaid certified mail, return receipt requested, to the following addresses:

CITY: City of El Paso
Attn: City Manager
300 North Campbell Street
El Paso, Texas 79901

with copy to: City of El Paso
ATTN: Planning and Inspections Department
811 Texas Avenue
El Paso, Texas 79901

with copy to: City of El Paso
ATTN: Financial Services Department –
Financial Accounting & Reporting
300 North Campbell Street
El Paso, Texas 79901

GRANTEE: El Paso County
500 W. San Antonio
El Paso Texas 79901

Or to such other addresses as Grantee may designate from time to time by written notice as required in this paragraph.

SECTION 15. ASSIGNMENT

The rights granted by this License inure to the benefit of the Grantee, and any parent, subsidiary, or successor entity now or hereafter existing. The rights shall not be assignable without the express advanced written consent of the El Paso City Manager.

SECTION 16. LEASING OR DEDICATION OF FACILITIES

Grantee, without the advanced written consent of the El Paso City Manager or designee, shall not lease the License Area to any non-grantee person or entity.

SECTION 17. ADMINISTRATION OF LICENSE

The El Paso City Manager or designee is the principal City official responsible for the administration of this License. Grantee recognizes that questions regarding the interpretation or application of this License shall be referred to the El Paso City Manager or designee.

SECTION 18. NO PROPERTY RIGHTS

Nothing herein shall grant any real property interest to the Grantee nor give rise to any vested right in the Grantee, Grantee's assigns or successors in interest, none of whom shall have a cause of action for damages upon revocation or termination of this License in accordance with the terms herein.

SECTION 19. LIENS AND ENCUMBRANCES

Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the License Area that arises or is alleged to have arisen from Grantee's use of the Licensed Area.

SECTION 20. RIGHT OF ENTRY AND INSPECTION

The City's authorized representative shall have the right to inspect the Licensed Area for the purpose of determining compliance with the terms of this License.

SECTION 21. LAWS AND ORDINANCES

Grantee shall comply with all statute, laws, codes and ordinances applicable to Grantee's construction, repair, renovation, alteration or use of the License Area.

SECTION 22. ENTIRE AGREEMENT

This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

SECTION 23. SEVERABILITY

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

ORDINANCE NO. _____

22-1007-3000 | 1214628

El Paso County

RTA

019432

PSPN22-00007

of this license.

SECTION 24. LAWS GOVERNING/VENUE

The laws of the State of Texas shall govern the validity, performances, and enforcement of this license and if legal action is necessary to enforce it, exclusive venue shall be in El Paso County, Texas.

SECTION 25. RESTRICTIONS AND RESERVATIONS

This License is subject to all right-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this license, or any extension thereof, any such right-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the License Area, Grantee shall have the right to terminate this License upon giving the City prior written notice of its intent to do so.

SECTION 26. EFFECTIVE DATE

The Effective Date of this License shall be the date last entered below. This License shall not take effect unless Grantee files Grantee's written acceptance with the City prior to the enactment of this License by the El Paso City Council.

Passed and Approved on this 31st day of January, 2023.

(Signatures being on the following pages)

WITNESS THE FOLLOWING SIGNATURES AND SEALS

THE CITY OF EL PASO:

Oscar Leeser

Oscar Leeser
Mayor

ATTEST:



Laura D. Prine

Laura Prine
City Clerk

APPROVED AS TO FORM:

Russell T. Abeln

Russell T. Abeln
Assistant City Attorney

APPROVED AS TO CONTENT:

Philip F. Etiwe

Philip F. Etiwe, Director
Planning and Inspections Department

ACCEPTANCE

The above instrument, with all conditions thereof, is hereby accepted this 31st day of January, 2023.

(Grantee signature being on the following page)

019432

ORDINANCE NO. _____
22-1007-3000 | 1214628
El Paso County
RTA

PSPN22-00007

GRANTEE:
County of El Paso

Ricardo A. Samaniego

By: County Judge, as

Print Name: Ricardo A. Samaniego

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 16th day of December, 2022, by Ricardo A. Samaniego as Grantee.

Christabelle Guzman
Notary Public, State of Texas

Christabelle Guzman
Notary's Printed or Typed Name

05-03-2025
My Commission Expires



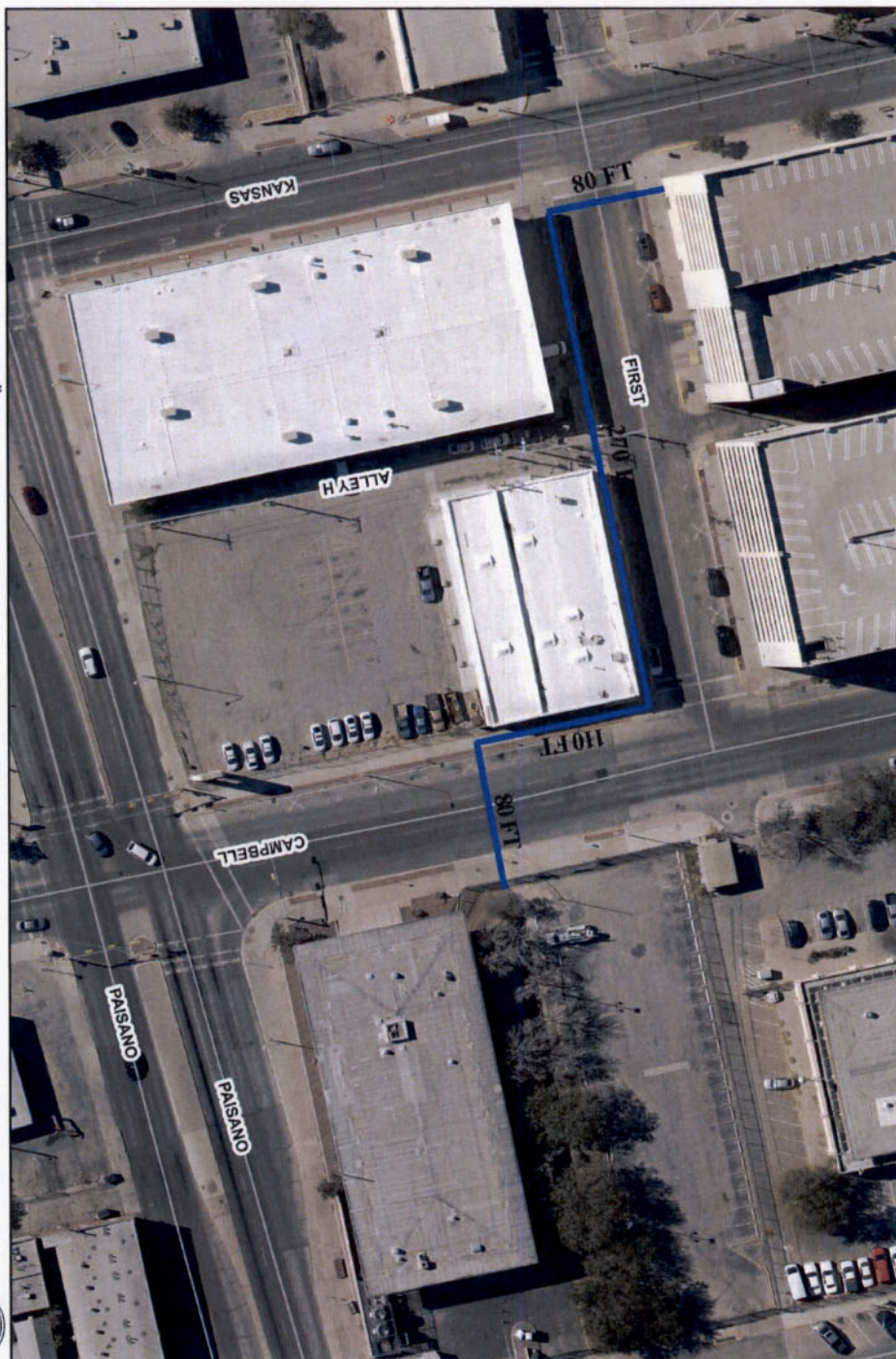
019432

ORDINANCE NO. _____
22-1007-3000 | 1214628
El Paso County
RTA 2022-1029

PSPN22-00007

EXHIBIT "A"

This map is designed for planning purposes only. The location and dimensions of the subject property are not guaranteed to show accurate conditions. Requirements of this map may vary from the actual conditions and may not reflect the current status of the property. Planning Commission reserves the right to modify or change this map at any time.



PSPN22-00007

ORDINANCE NO. 019432
22-1007-3000 | 1214628
El Paso County
RTA

PSPN22-00007



915-303-7383 x1 1 915-497-6341
felixmullorbo@gmail.com
www.svincinTEXAS.com

ENCROACHMENT MAP

SVC Construction Inc.
State License #: 802328142
City License #: LCCTR16-00001
Shop: 14889 Desert Loop
September 1, 2022



Manholes

019432

ORDINANCE NO. _____
22-1007-3000 | 1214628
El Paso County
RTA

PSPN22-00007