CITY OF EL PASO, TEXAS
PLANNING, RESEARCH & DEVELOPMENT DEPARTMENT

MEMORANDUM

TO: The Honorable Mayor and City Council
Jim Martinez, Chief Administrative Officer
Patricia D. Adauto, Deputy Chief Administrative Officer
Laura Uribarri, Executive Assistant to the Mayor
Adrian Ocegueda, Executive Assistant to the Mayor

FROM: Raymond Bonilla, Plan Reviewer I

SUBJECT: Council Agenda Item
Introduction: August 10, 2004
Public Hearing: August 24, 2004

DATE: August 4,2004

The following item has been scheduled for City Council action as noted above. If you have any questions, I may be contacted at 541-4767.

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO ATT&T CORPORATION PERMITTING THE ENCROACHMENT ONTO PUBLIC RIGHT-OF-WAY OF TWO (2) ONE POINT NINE INCH (1.9") SUBSURFACE INNER-DUCTS (PVC PIPES), TWO (2) SUBSURFACE FOUR FOOT BY FOUR FOOT (4"X4") CONCRETE MANHOLES, AND, ONE (1) SUBSURFACE THREE QUARTER INCH (3/4") FIBER OPTIC CABLE ALONG MAGOFFIN AVENUE BETWEEN OCHOA STREET AND CAMPBELL STREET, OCHOA STREET BETWEEN MAGOFFIN AVENUE AND MYRTLE AVENUE, AND ALONG MYRTLE AVENUE BETWEEN OCHOA STREET AND CAMPBELL SETREET. *(SP-04021, Total Annual Fee: $2,640.00,* ***District 8)***

Office Use Only			
Mayor (5 copy):	*date:* _____	*time:* ____	*by:* _____
Representative District 1:	*date:* _____	*time:* ____	*by:* _____
Representative District 2:	*date:* _____	*time:* ____	*by:* _____
Representative District 3:	*date:* _____	*time:* ____	*by:* _____
Representative District 4:	*date:* _____	*time:* ____	*by:* _____
Representative District 5:	*date:* _____	*time:* ____	*by:* _____
Representative District 6:	*date:* _____	*time:* ____	*by:* _____
Representative District 7:	*date:* _____	*time:* ____	*by:* _____
Representative District 8:	*date:* _____	*time:* ____	*by:* _____

The Special Privilege is to permit AT&T Corporation to encroach onto portions of public rights-of-way with a fiber optic cable system which will consist of two (2) subsurface one point nine inch (1.9") Inner-ducts (PVC pipes) along a portion of Magoffin Avenue, two (2) four foot by four foot (4'x4') concrete manholes, and one (1) three quarter (3/4) fiber optic cable along Magoffin Avenue between Ochoa Street and Campbell, and along Ochoa Street between Magoffin Avenue and Myrtle Avenue, and along Myrtle Avenue between Ochoa Street and Campbell Street.

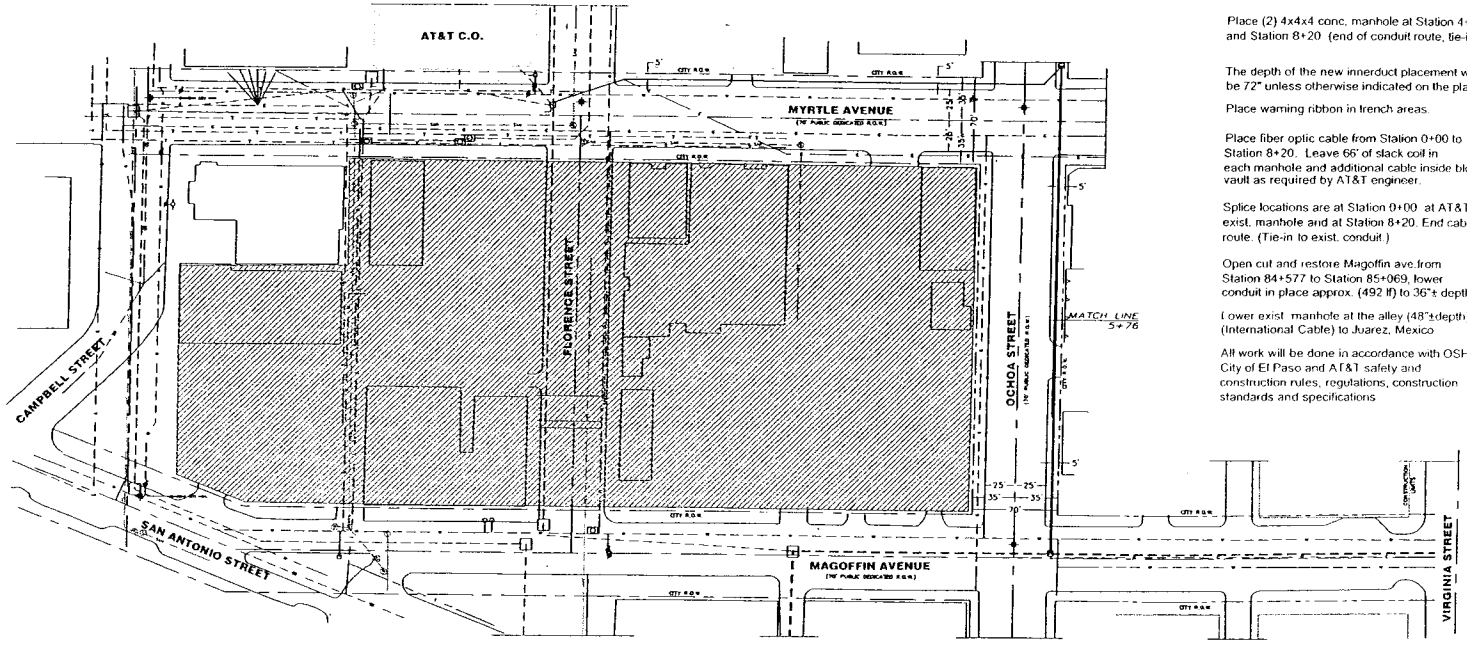
The Grantee must comply with the following provisions:

- The applicant must obtain permits from the Building Permits and Inspections Department prior to construction of all the proposed encroachments.
- Term of thirty (30) years, for all proposed encroachments along Magoffin Avenue, Ochoa Street, and Myrtle Avenue from the date of execution of this agreement.
- As consideration for this Special Privilege, Grantee shall pay to the City the fee of ($1,320.00) per two (2) Inner-duct(PVC pipes) per year, for a Grand Total of ($2,640.00) per year.
- Providing liability insurance throughout the term of this license.

C: R. ALAN SHUBERT, DIRECTOR OF BUILDING PERMITS & INSPECTIONS
TERRY CULLEN-GARNEY, FIRST CITY ATTORNEY
MATT WATSON, ASST.CITY ATTORNEY

NOTE:

NO EXPLOSIVES ALLOWED WITHIN THIS PROJECT OR CITY LIMITS



ROUTE MAP

SCOPE OF WORK SUMMARY

Place 3-1.9" OD innerducts from Station 0+00 to Station 8+20, (a total of 820 lf) by directional boring. The proposed conduit is paralleling Myrtle Ave. and Ochoa St. R.O.W. at 5' (5 feet)

Place (2) 4x4x4 conc. manhole at Station 4+23 and Station 8+20 (end of conduit route, tie-in)

The depth of the new innerduct placement will be 72" unless otherwise indicated on the plans.

Place warning ribbon in trench areas.

Place fiber optic cable from Station 0+00 to Station 8+20. Leave 66' of slack coil in each manhole and additional cable inside bldg vault as required by AT&T engineer.

Splice locations are at Station 0+00 at AT&T exist. manhole and at Station 8+20. End cable route. (Tie-in to exist. conduit.)

Open cut and restore Magoffin ave.from Station 84+577 to Station 85+069, lower conduit in place approx. (492 lf) to 36"± depth.

Lower exist. manhole at the alley (48"±depth) (International Cable) to Juarez, Mexico

All work will be done in accordance with OSHA, City of El Paso and AT&T safety and construction rules, regulations, construction standards and specifications

REVISIONS:

1 – SEPT. 6, 02
2 – REVISED MAY 14, 03
3 – REVISED JUNE 15, 03 per City of El Paso Engineering Dept.
4 – REVISED APRIL 20, 2004 per City of El Paso Engineering Dept.
5 – REVISED MAY 12, 2004 per City of El Paso Engineering Dept.

NOTES:

Contractor shall notify City of El Paso Engineering Department of Placement of borepits before construction begins.

Contractor to verify all utility locations.

AT&T CONDUIT RELOCATE CITY OF EL PASO EL PASO CO., TX

AT&T

PREPARED FOR RECORD

APPROVED FOR:
OUTSIDE PLANT ENGINEER DATE

PROPRIETARY
USE PURSUANT TO COMPANY INSTRUCTIONS
SPECIFICATION
ESTIMATE

OWNERSHIP:
CABLE GEO:
CABLE CLLI:

SCALE: 1" = 100'

ROUTE MAP

NOTES:

1. OSHA SAFETY REQUIREMENTS SHALL BE OBSERVED AND EXERCISED.
2. THE CONTRACTOR SHALL NOTIFY ALL UTILITIES 48 HOURS PRIOR TO DIGGING. ALL SUBSTRUCTURES INDICATED ON THESE PLANS ARE TAKEN FROM AVAILABLE RECORD INFORMATION ONLY AND NEITHER AT&T NOR THE ENGINEER ASSUME LIABILITY AS TO THEIR COMPLETENESS OR ACCURACY. THE CONTRACTOR SHALL LOCATE ALL UTILITIES WHETHER SHOWN ON THE PLANS OR NOT. THE CONTRACTOR SHALL BEAR THE COST OF REPAIR OR REPLACEMENT OF ANY DAMAGED UTILITY.
3. R.O.W. RESTORATION, STREET AND SIDEWALK CUT, REPAIR AND RESTORATION REFER TO THE CITY OF EL PASO GUIDELINES AND STANDARDS.

CONSTRUCTION NOTE:
THE CONTRACTOR WILL OBSERVE THE "Hand Dig Only" ZONE.
THE ZONE IS: 3' ABOVE OR BELOW THE CABLE.
2 FEET LEFT OR RIGHT OF THE CABLE.

TEXAS SAFETY EXCAVATION SYSTEM

STATE OF TEXAS
BRUCE B. PATTERSON
84506
LICENSED
PROFESSIONAL ENGINEER

5/13/04

ORDINANCE NO. _____

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO ATT&T CORPORATION PERMITTING THE ENCROACHMENT ONTO PUBLIC RIGHT-OF-WAY OF TWO (2) ONE POINT NINE INCH (1.9") SUBSURFACE INNER-DUCTS (PVC PIPES), TWO (2) SUBSURFACE FOUR FOOT BY FOUR FOOT (4"X4") CONCRETE MANHOLES, AND, ONE (1) SUBSURFACE THREE QUARTER INCH (3/4") FIBER OPTIC CABLE ALONG MAGOFFIN AVENUE BETWEEN OCHOA STREET AND CAMPBELL STREET, OCHOA STREET BETWEEN MAGOFFIN AVENUE AND MYRTLE AVENUE, AND ALONG MYRTLE AVENUE BETWEEN OCHOA STREET AND CAMPBELL SETREET.

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

That the Mayor be authorized to sign, on behalf of the City of El Paso, a Special Privilege upon the following terms to AT&T Corporation (hereinafter referred to as "Owner").

1. This Special Privilege shall be in a form, which is attached and incorporated as Exhibit "A;"

2. The Special Privilege is to permit AT&T Corporation to encroach onto portions of public rights-of-way with a fiber optic cable system which will consist of two (2) subsurface one point nine inch (1.9") Inner-ducts (PVC pipes) along a portion of Magoffin Avenue, two (2) four foot by four foot (4'x4') concrete manholes, and one (1) three quarter (3/4) fiber optic cable along Magoffin Avenue between Ochoa Street and Campbell, and along Ochoa Street between Magoffin Avenue and Myrtle Avenue, and along Myrtle Avenue between Ochoa Street and Campbell Street.

3. As consideration for this Special Privilege, Owners, shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A," subject to the terms and conditions of this ordinance and Special Privilege; and

4. This Special Privilege shall be for a term of thirty, (30) years from the date of execution of this ordinance.

PASSED AND APPROVED this **24h** day of **August** 2004.

THE CITY OF EL PASO

Joe Wardy
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Matt Watson

Assistant City Attorney

APPROVED AS TO CONTENT:

FOR ALAN SHUBERT

R. Alan, Shubert, Director of Building Permits & Inspection

Document #: 2830
Document Name: Planning/1/ORD-SpecPriv AT&T-Magoffin Av MW
SP-04021

THE STATE OF TEXAS)

COUNTY OF EL PASO)

EXHIBIT "A"
SPECIAL PRIVILEGE

THIS SPECIAL PRIVILEGE, made and entered into this 24th day of August, 2004, by and between the **CITY OF EL PASO**, hereinafter called "City," and **AT&T Corporation**, hereinafter called "Grantee,"

WITNESSETH:

WHEREAS, Grantee is requesting the use of portions of City rights-of-way located at Magoffin Avenue, Ochoa Street, and Myrtle Avenue in the City of El Paso, El Paso County, Texas.

WHEREAS, the Grantee has requested permission from the City to encroach onto portions of public right-of- way with two (2) subsurface one point nine inch (1.9") Inner-ducts (PVC pipes), along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue, two (2) subsurface four foot by four foot (4'x4') concrete manhole, along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue, and one (1) three quarter inch (3/4") fiber optic cable, along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue.

WHEREAS, the City Council finds that the grant of a Special Privilege upon the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. DESCRIPTION. The City hereby grants a Special Privilege to Grantee to encroach onto portions of public rights-of-way with two (2) subsurface one point nine inch (1.9") Inner-ducts (PVC pipes), along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue, two (2) subsurface four foot by four foot (4'x4') concrete manhole, along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue, and one (1) three quarter inch (3/4") fiber optic cable, along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue as shown in the attached Exhibit "A", all Exhibits are attached hereto and made a part hereof for all purposes, and which are hereinafter referred to as "Premises."

2. TERM. The term of this Special Privilege shall be for thirty years (30) from the date of execution of this agreement. If the Grantee wishes to renew this Special Privilege for an additional thirty (30) year term Grantee shall submit an application to the City no later than three (3) months prior to the expiration date of this Special Privilege.

This Special Privilege shall expire without notice at the end of such expiration period unless an application for renewal is submitted in writing to the City by the Grantee as herein required. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege.

3. CONSIDERATION. As consideration for this Special Privilege, Grantee shall pay to the City the fee of One Thousand Three Hundred Twenty and No/100 Dollars ($1,320.00) per Inner-ducts (PVC pipe) per year for a total sum of Two Thousand Six Hundred Forty and No/100 Dollars ($2,640.00) per year.

The Grand Total is Two Thousand Six Hundred Forty and No/100 Dollars ($2,640.00) per year. The advance payment for the first year shall be in the form of a cashier's check payable to "The City of El Paso" and delivered to the Office of the City Comptroller. If the Special Privilege is disapproved, by the El Paso City Council a full refund of the advance payment shall be made by the Office of the City Comptroller within fifteen (15) days of the denial action.

Each year, no later than the tenth day of the month in which the Special Privilege was approved by the City Council, the grantee shall remit to the City payment in full of all annual fees. Failure to remit such payment will be cause for termination.

Grantee expressly accepts and agrees that the fee set forth herein is subject to any and all future amendments to Section 15.08.120.D. Grantee expressly agrees to pay any additional amounts as consideration for this Special Privilege, which could result from a re-computation or assessment of fees pursuant to enactment of future code amendments. This Special Privilege is granted on the condition that Grantee shall pay for all costs associated with all the encroachments on public rights-of-way as well as all costs for the restoration of the Premises.

4. USE OF PROPERTY. This Special Privilege is granted solely for the encroachment onto public rights-of-way with two (2) subsurface one point nine inch (1.9") Inner-ducts (PVC pipes), along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue, two (2) subsurface four foot by four foot (4'x4') concrete manhole, along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue, and one (1) three quarter inch (3/4") fiber optic cable, along a portion of Magoffin Avenue, Ochoa Street, and Myrtle Avenue. The exact location wherein such encroachments are allowed is subject to the prior approval of the City Engineer who shall determine location based on health and safety concerns as well as any existing or possible future subsurface encroachments provided by any other individuals or entities to include but not be limited to governmental entities and utilities.

As an express condition of this Special Privilege, and not as a mere covenant, Grantee agrees to restore the Premises to its original state upon removal of any of the encroachments stated herein. Grantee shall coordinate all design and construction plans with the Director for Building Permits and Inspections or his designee. Grantee shall not commence construction under this Special Privilege until the City Building Permits and Inspections Department have approved all plans for the construction of the Structure as appropriate under the applicable City ordinances and the terms of this Special Privilege. This Special Privilege shall not be construed to waive any City permit requirements. Grantee shall be responsible for all maintenance.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege should the City wish to do so for whatever reason.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance or repair.

5. IMPROPER USE. This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way, which impairs its function as a right-of-way. Grantee shall not construct any additional improvements, or make any

additions or alterations on or over the City right-of-way, without the prior written consent of the El Paso City Council.

6. REPAIRS. Grantee shall keep the property, Structure, and Premises in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. Grantee shall be responsible for all maintenance of the Structure and Premises and shall repair any damage to the Premises regardless of the cause of such damage, at Grantee's sole expense.

7. INDEMNITY. As a condition of the Special Privilege, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any person, or for damage to any property, arising out of or in connection with Grantee's use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

8. LIABILITY INSURANCE. Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars ($250,000.00) per person, and Five Hundred Thousand and No/100 Dollars ($500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars ($100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantees, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured's to the full amount of the policy limits.

No special privilege license shall be granted by El Paso City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Building Permits & Inspection Department. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

9. CANCELLATION. Should the City at any time or for any reason decide that the right-of-way onto which any of the encroachments are situated should not continue to be subject to this license, the City may, upon thirty (30) days written notice, cancel this Special Privilege at no cost to the City and may take possession of the public right-of-way. All rights of the Grantee in the Premises shall then be terminated. Grantee may cancel this Special Privilege, for any reason, upon thirty, (30) day's prior written notice to the City, and all rights of the Grantee shall then be terminated.

In addition, if, for a period of six (6) months, Grantee ceases to use or occupy the property for the purposes herein contemplated, or if Grantee defaults in any of his obligations under this Special Privilege and fails to correct such defaults within thirty (30) days after written notice to do so; the City may cancel this Special Privilege and take possession. All rights of the Grantee on the City right-of-way shall then terminate.

Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

Upon termination of this Special Privilege for whatever reason, all encroachments shall become the property of the City and shall, at the option of the City, be removed by the Grantee without cost to the City.

10. 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 property that arises or is alleged to have arisen from Grantee's use of the Premises.

11. ASSIGNMENT. Grantee shall not assign this Special Privilege without the prior written consent of the El Paso City Council.

12. **MISCELLANEOUS.**

a. SIGNS: This Special Privilege does not grant any permission to erect signage, but, rather, only authorizes an encroachment upon public right-of-way as described herein. Permission to erect signage must be obtained by Grantee pursuant to applicable City Code and ordinance provisions and subject to the restrictions and requirements contained therein.

b. RIGHT OF ENTRY AND INSPECTION: The City's authorized representative shall have the right to enter upon the property at all reasonable times for the purpose of inspecting the same and determining compliance with the terms of this Special Privilege.

c. LAWS AND ORDINANCES: Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the Structure, as well as Grantee's use of the Premises, except as specifically provided by the grant of this Special Privilege. This Special Privilege shall not grant permission for Grantee to erect the Structures without first having obtained any required building permits from the City Building Permits and Inspections Department. In addition, Grantee shall obtain any and all other required permits and inspections and shall pay the necessary permit fees.

d. SUCCESSORS AND ASSIGNS: All of the terms, provisions, covenants and conditions of this Special Privilege shall inure to the benefit and be binding upon the parties, their successors and assigns except to the extent otherwise provided in this special privilege license. Grantee and its successors and assigns shall be liable for any breach of any of the terms provided for herein.

e. NOTICES: All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

with copy to: City of El Paso
Attn: City Clerk
#2 Civic Center Plaza, 2nd Floor
El Paso, Texas 79901-1196

and: AT&T Corporation

or to such other address as the parties may designate to each other in writing from time to time.

f. 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.

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

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

i. The Director of Building Permits and Inspections or his designee is the principal City official responsible for the administration of this Special Privilege and Grantee recognizes that questions regarding the interpretation or application of this ordinance shall be referred to the Director of Building Permits and Inspections or his designee.

13. <u>RESTRICTIONS AND RESERVATIONS.</u> This Special Privilege is subject to all rights-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 Special Privilege, or any extension thereof, any such rights-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 Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

14. **EFFECTIVE DATE.** This Special Privilege shall not take effect unless Grantee files his written acceptance with the City Building Permits & Inspections Department prior to its passage and approval by the El Paso City Council. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantee warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

_____
Joe Wardy
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Matt Watson

Assistant City Attorney

APPROVED AS TO CONTENT:

FOR ALAN SHUBERT
_____
R. Alan,Shubert, Director of Building Permits & Inspections

ACCEPTANCE

4 The attached instrument, with all conditions thereof, is hereby accepted this day of October, 2004.

GRANTEE:

AT&T Corporation

By: Mike Robinson

Printed Name: MIKE ROBINSON

Title: C/T

ACKNOWLEDGEMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this 4th day of August, 2004, by MIKE ROBINSON, C/T. on behalf of AT&T Corporation as Grantee.

Lucy C. Martinez

Notary Public, State of Texas

Lucy C. MARTINEZ

Notary's Printed or Typed Name:

4/29/08

My Commission Expires:

LUCY C. MARTINEZ
NOTARY PUBLIC
In and for the State of Texas
My Commission expires
April 29, 2008

Document #: 2830
Document Name: Planning/1/ORD-SpecPriv AT&T-Magoffin Av MW
SP-04021