

RECOMMENDATION: That City Council set this matter for a public hearing on Saturday, November 16, 2019, and after hearing public testimony approve the attached five-year license agreement with Teleport, and authorize the City Manager to execute the license agreement and to take any other actions that are necessary to implement the license agreement.

DISCUSSION: In or about October 2013, the City, under a previous license agreement approved the transfer of the telecommunications facilities of TCG Virginia to Teleport. These facilities consisted of approximately 7.5 miles of conduit and fiber as set forth on Exhibit 1 to the proposed license agreement. The routes subject to the agreement are the following:

1 Original TCG Route: This is the approximately 33,000 feet of cable that TCG Virginia installed under its 2009 license agreement with the City. The route generally runs from Commonwealth Avenue to Duke Street, to Holland Lane to Eisenhower Avenue to Mill Road (via Telegraph Road and Tyler Street) and continues to Van Dorn Street and Edsall Road.

2. Braddock Road/Commonwealth Avenue/North Washington Street Route: This is the additional bank of two conduits which were installed under the October 31, 2011 Amendment 1, to the 2009 License Agreement. The additional conduit banks commenced at the intersection of Braddock Road and Commonwealth Avenue and was installed for approximately 600 feet to North Washington Street.

3. Mark Center Drive/Mark Center Avenue Route. This is the route approved by the February 2012 Amendment to the 2009 License Agreement granting Teleport the ability to trench to add twelve feet of HDPE ducts and fiber in the public rights of way.

The significant provisions of the proposed agreement are summarized below.

The term of the agreement is for five years and will run from December 1, 2019 through November 30, 2024. It is not renewable. However, the agreement gives Teleport the right to negotiate with the City for a new license at the conclusion of the agreement.

Second, as compensation for use of the public rights-of-way the City receives from Teleport annually approximately, \$1,335.00, as the statutory right-of-way fee imposed under Virginia Code § 56.468.1 and City Code § 5-2-160, et seq., which is imposed on end users in the City. The statutory right-of-way fee is calculated annually by the Virginia Department of Transportation (“VDOT”) on a state-wide basis, and allocated to each locality based on a formula which accounts for the linear footage of conduit and number of users in the locality. The current fee is \$ 1.20 per access line for the period of July 1, 2019 through June 30, 2020.

Third, as discussed above, the agreement requires Teleport to submit an Annual Operations Plan to T&ES for each of the five years covered by the agreement. The operations plan that requires Teleport to describe all the activities to install the conduit and to pull cable that Teleport intends to undertake in the public rights-of-way during the twelve month period covered by the plan, the sites where any activity in the public rights-of-way will occur and a tentative timetable. The director of T&ES must review the plan and determine whether the public rights-of-way upon which the construction is planned are appropriate sites for the proposed activity. These operations plans are intended to enable T&ES to coordinate Teleport’s activities, if any, with other planned construction in the City streets and public rights-of-way, thereby minimizing the disruption and inconvenience attendant to such work.

Fourth, the agreement requires Teleport prior to undertaking any specific project within the rights-of-way to

submit to T&ES, a plan which, among other things, will (i) identify the location of the project, (ii) describe the equipment to be installed and the techniques to be used, (iii) state the start and end dates, (iv) propose a traffic control plan and (v) verify that Teleport has or will obtain all necessary approvals from other governmental entities including departments or agencies of the City.

Fifth, the agreement provides that the City can require Teleport to remove or relocate, Teleport's expense to the extent permitted by law, any conduits, cables or other equipment when City staff has determined that the equipment interferes with or disturbs the operation, improvement, repair or maintenance of the rights-of-way or of other utility services.

Sixth, the agreement requires Teleport to obtain permits from the City for any maintenance work and to repair all damages resulting from the work.

Seventh, the agreement provides that, upon its termination or non-renewal, Teleport will remove all of its conduits, cable and other equipment from the City's rights-of-way.

Finally, the agreement provides that Teleport must maintain adequate insurance to protect the City and any residents against claims arising from the system or the company's work on the system.

We will be pleased to answer any questions that you may have about this matter.

ATTACHMENTS:

1. License Agreement
2. Network Map