



Legislation Text

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File #: 24-2008, Version: 1

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City of Alexandria, Virginia

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MEMORANDUM

**DATE:** JUNE 4, 2024

**TO:** THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

**THROUGH:** JAMES F. PARAJON, CITY MANAGER /s/

**FROM:** ADRIANA CASTAÑEDA, DIRECTOR TRANSPORTATION AND ENVIRONMENTAL SERVICES

**DOCKET TITLE:**

Introduction of a Five-Year License Agreement with Zayo Group LLC to permit Zayo Group LLC.'s existing conduits and fiber optic cables to remain in the City of Alexandria's public rights-of-way and to allow placement of additional conduits and fiber optic cable telecommunication services, not cable television services in the City of Alexandria.

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**ISSUE:** Consideration of a five-year license agreement with Zayo Group LLC. ("Zayo"), to authorize its conduits and fiber optic cables to remain along with additional placement in the City of Alexandria's public rights-of-way and to allow Zayo to provide telecommunication systems, not cable television services, in the City of Alexandria.

**RECOMMENDATION:** That City Council:

1. Set this matter for a public hearing on Saturday, June 15, 2024, and;
2. After hearing public testimony approve the attached five-year license agreement with Zayo, and;
3. Authorize the City Manager to execute the license agreement, and to take any other actions that are necessary to implement the agreement.

**DISCUSSION:** In December 2018, the City Council approved a five-year license agreement with Zayo to install conduits and fiber optic cables in the City's public rights-of-way. This agreement expired on November 30, 2023. Zayo is seeking approval of a new license agreement with the City on basically the same terms and conditions as the expired agreement with a few amendments which are discussed below.

First, the proposed agreement includes an additional installation by Zayo of approximately 500 feet of fiber on the southside of Eisenhower Avenue in the City for use by the United States Patent and Trademark Office (Attachment 1). This fiber is being installed in an existing conduit which is owned by Verizon. Accordingly, there will be minimal construction involved in the installation. This build is the reason for the delay of Zayo negotiating a new agreement. They were seeking approval from Verizon to use Verizon's conduits in the Eisenhower Avenue/Dulaney Street vicinity.

Second, in section 7(c) of the proposed agreement the City has added specific protections for the City regarding the issuance of City permits for construction and restoration. These additional terms include:

1. Zayo shall have no more than 200 linear feet of scheduled construction work that is not fully restored at any given time.
2. Zayo shall provide a spreadsheet to TES staff not less than once a month, as required by staff, that identifies all outstanding work that has not been finalized and signed off by a City inspector. The spreadsheet shall include but not be limited to location of work, city permit number with expiration date, type of restoration needed (asphalt, concrete, brick, landscaping) estimated date of completion, current status of restoration and the length of the unrestored section(s).
3. Zayo shall apply for an individual permit for each emergency cut within 24 hours of the start of its work and must contact TES Permit Center for a control number before starting any emergency work.
4. Temporary restoration work shall remain in place for no longer than one (1) month unless approved in writing by the Director of T&ES or her designee. Zayo shall be responsible for maintaining and constructing the restoration in such a manner that it provides a smooth and safe travel surface. If the temporary restoration deteriorates to a state that it no longer provides a smooth and safe traveling surface in the review by the Director of T&ES or her designee, Zayo shall restore and repair that site within 24 hours of receiving notice from the City.
5. All temporary asphalt restoration shall have a square cap indicating the company's name and month and year when the work was completed. The color of the cap shall conform with the American Public Works Association's Uniform Color Code.
6. All permanent asphalt restoration shall have a circular cap indicating the company's name and month and year when the work was completed. The color of the cap shall conform to the American Public Works Association's Uniform Color Code.

Third, in Section 5 of the proposed agreement Zayo has requested the addition of language in the event that the City has a request to disclose any of Zayo's information that Zayo has identified as privileged or confidential that the City will notify Zayo and allow Zayo the opportunity to seek a protective order from a court of competent jurisdiction prior to the release of such information.

The remaining significant terms of the proposed agreement are identical to the expired agreement and are described below:

First, the term of the agreement is for five years and will run from July 1, 2024, through June 30, 2029. It is not

renewable. However, the agreement gives Zayo 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 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 \$ 1.26 per access line for the period of July 1, 2023, through June 30, 2024. However, in the event that the facilities are not being used by end users in the City (and until such time that end users are using the facilities) a fee of \$3.50 per linear foot is imposed for use of the City’s rights-of-way.

Third, the proposed license agreement requires Zayo to submit an Annual Operations Plan to T&ES for each of the five years covered by the agreement. The operations plan requires that Zayo describe all the activities to install the conduit and to pull cable that Zayo 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 Zayo’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 that prior to undertaking any specific project within the rights-of-way, Zayo must 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 Zayo 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 Zayo to remove or relocate, at Zayo’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 Zayo 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, Zayo will remove all its conduits, cable and other equipment from the City’s rights-of-way.

Finally, the agreement provides that Zayo 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.

**FISCAL IMPACT:** Any proposed changes are anticipated to have minimal fiscal impacts on the City or its residents. The statutory right-of-way fee stands at \$1.26 per access for the period from July 1, 2023, through June 30, 2024. To date, Zayo has paid right-of-way fees totaling \$801.60 from 2018 onwards.

**ATTACHMENTS:**

1. Site Map of new route in Verizon conduit at 600 Dulaney Street, Alexandria, Virginia
2. Prior License Agreement dated December 1, 2018 - November 30, 2023.
3. Proposed License Agreement

**STAFF:**

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