



Legislation Text

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File #: 19-1285, Version: 1

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City of Alexandria, Virginia

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MEMORANDUM

**DATE:** NOVEMBER 7, 2018

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

**FROM:** MARK B. JINKS, CITY MANAGER /s/

**DOCKET TITLE:**

Introduction of a Renewed 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-Ways 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 the renewal of a five-year license agreement with Zayo Group LLC. ("Zayo"), to authorize the its conduits and fiber optic cables to remain in the City of Alexandria's public rights-of-ways to allow Zayo to provide telecommunications systems, not cable television services, in the City of Alexandria.

**RECOMMENDATION:** That City Council set this matter for a public hearing on Saturday, November 17, 2018, and after hearing public testimony approve the attached five-year license agreement with Zayo, and authorize the City manager to execute the license agreement and to take any other actions that are necessary to implement the agreement.

**BACKGROUND:** In or about June 2012, City Council approved a five-year license agreement with Fibergate of Virginia, LLC. to install conduits and fiber optic cables in the City's public rights-of-ways. On or about February 2014, with approval of the City, Fibergate of Virginia, transferred its telecommunications facilities in the City's rights-of-ways to Zayo Group, LLC. Zayo is the successor in interest to Fibergate and seeks to renew the expired license agreement on essentially the same terms as the prior agreement with the following additions.

First, Zayo has agreed to install approximately 1,480 feet of conduit for use by the City at no expense to the City. These conduit will be installed along Zayo's proposed route along Reed Avenue.

Second, Zayo is seeking to add three additional routes to its existing facilities. These routes are along the west side of Seminary Road, Courthouse Square and Reed Avenue and are shown on Exhibits I, J and K to the proposed license agreement.

**DISCUSSION:** 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 November 1, 2018 through October 31, 2023. 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 \$ 1.09 per access line for the period of July 1, 2018 through June 30, 2019. However, in the event that the facilities are not being used by end user 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-ways.

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 Zayo 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 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 of 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:** As described above, the license holder Zayo will pay the City a per linear foot right-of-way fee as proscribed by State law and VDOT calculations. Zayo has agreed to construct conduit for City use at no cost to City with value of \$14,350. Pursuant to Virginia Code §56-462, as amended and City Code §5-2-160, the City received as right of way payments \$275 for 2018 and \$373 for 2017.

**ATTACHMENT:** Zayo Group LLC License Agreement

**STAFF:**

Joanna C. Anderson, City Attorney

Karen S. Snow, Assistant City Attorney