



Legislation Text

File #: 15-161, **Version:** 1

Staff Report for a Resolution Approving the First Amendment to the License Agreement between the City of San Leandro and San Leandro Dark Fiber LLC

BACKGROUND and ANALYSIS

Effective October 17, 2011, the City and San Leandro Dark Fiber LLC (SLDF) entered into a License Agreement that provided SLDF access to the City's conduit within the public right of way to install, construct (where necessary), and manage a fiber optic loop within the City's downtown and industrial areas. This First Amendment to the License amends the original license to clean-up language and processes between the City and SLDF, and to incorporate rates, terms and conditions applicable to SLDF's use of the Expanded Property, as defined below.

Pursuant to the Original License, SLDF currently installs and operates fiber optic cables and related facilities (the "**Project**" or "**Projects**") in existing City-owned and managed conduit located on City owned real property and/or within the City's right-of-way. On September 27, 2012, the City received verification that it was approved for a 50%, \$2,120,000 matching grant from the federal Economic Development Agency ("EDA") that enables the City to construct an additional 7.5 miles of conduit (the "**Expanded Property**"). Construction of the additional 7.5 miles of conduit will require the City to match the federal grant through the inclusion of property valued at market rate, in-kind services and cash, for a total estimated cost of \$4.3 million.

The value of the City's contribution to the Project is approximately \$6 million and the value of the City's contribution to the Expanded Property is approximately \$4.6 million including the EDA grant, for a total City contribution of approximately \$10.6 million. In order to carry out and complete the Project, SLDF must have access to the Expanded Property and the City's right-of-way to carry out additional work to expand the fiber optic loop and access.

This First Amended License acknowledges the significant investment in the Project by the City through securing the Expanded Property and providing in-kind services and cash for the public interest, welfare and benefit of the City's residents and businesses. This First Amendment also acknowledges the City's responsibility to ensure service delivery to the San Leandro community is as transparent and high quality as possible. To that end, this First Amendment incorporates a Fiber Optic Responsibility Matrix, a Service Level Agreement, Standard Operating Procedures, and adjustments to the responsibilities as to ownership and maintenance of the facilities within the Project, none of which are in the current draft of the agreement.

This First Amendment also establishes responsibilities for payment when the initial term of the license concludes, and clarifies the procedure for how to value the fiber optic loop, as an asset, if SLDF decides to sell the facilities installed within the conduit. This First Amendment also imposes, to the fullest extent permitted by law and industry practice, reporting requirements upon SLDF regarding the services provided over the fiber optic network. SLDF will also dedicate and convey to the City

additional fiber optic strands for the City's exclusive use. The City currently owns 30 strands that were dedicated and conveyed by SLDF to the City, without restrictions, as part of the original license. As part of this First Amendment, SLDF will convey an additional 42 strands in the Expanded Property on top of the 30 for a total of 72 strands conveyed and dedicated to the City in the Expanded Property. The 42 additional strands will be subject to some restrictions related to use for the public interest, and furthermore, that SLDF has the right to lease 40 of the 72 strands from the City at reasonable rates.

All other terms of the Original License remain in full force and effect.

Fiscal Impact

No additional cost to the City is expected at this time.

ATTACHMENT

Attachment to Resolution

- DRAFT First Amendment to License Agreement with San Leandro Dark Fiber

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