



Date: April 10, 2014

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Marvin G. Williams, Director of Public Works
Subject: Telecommunication License Agreement with MCNC

Executive Summary

Microelectronics Center of North Carolina (MCNC) proposes to install and maintain Telecommunications Facilities within City limits. A license agreement is required when private utilities, such as conduits and fiber optic cable, are installed in the public right-of-way within the City limits. Pursuant to Section 62-56 of the City of Durham Code of Ordinances, MCNC seeks approval of the Telecommunication License Agreement from City Council.

This Telecommunications License would only permit MCNC, upon obtaining required approvals and permits, to place its Telecommunications Facilities in those portions of the public right-of-way approved by the City.

Recommendation

To authorize the City Manager to enter into a license agreement with MCNC for installation of Telecommunications Facilities within public rights-of-way located within City limits.

Background

MCNC, a non-for-profit corporation, proposes to install and maintain Telecommunications Facilities within City limits. Per Section 62-56: "Sidewalks, curbs, gutters, street paving for private interests – Excavations, permits, licenses, and franchises" of the City of Durham Code of Ordinances, a license agreement is required when privately owned and/or maintained features, such as conduits and fiber optic cable, are proposed to be installed in the public right-of-way. A separate excavation permit from the City's Public Works Department is required for the actual construction of such features.

MCNC has agreed to the terms of the Telecommunication License Agreement and has provided the \$7,500 fee and a \$250,000 performance bond. The initial scope of work proposed by MCNC includes installation of approximately 4 miles of fiber optic cable along Alston Avenue, Cornwallis Road, and Northeast Creek Parkway (see attached map and exhibit). Prior to initiating construction at these identified locations, the Licensee shall first obtain an excavation permit from the City's Public Works Department. Installation of Telecommunication Facilities for locations yet to be determined will require separate excavation permits.

The Telecommunication License Agreement and the performance bond are perpetual in nature. The Telecommunication License Agreement can be terminated if a superseding Telecommunications Franchise or license is executed by the City and the Licensee or if it's forfeited. The City reserves

the right to declare a forfeiture of the Telecommunication License Agreement in the event that the Licensee does not comply with any material provision of the Telecommunication License Agreement and does not fix such non-compliance after been notified by the City.

The City is responsible for ensuring that current and future providers of Telecommunications Services will have access to the public right-of-way in accordance with Section 253 of the Federal Communications Act, 47 U.S.C. § 253. This License does not confer an exclusive right or privilege to occupy or use the public right-of-way for delivery of Telecommunications Service. The City reserves all rights to use the public right-of-way for any purpose not prohibited by law, including the provision of Telecommunications Services, and all rights to grant authorizations to use the public right-of-way to any other providers of Telecommunications Services.

Issues/Analysis

Any feature in the rights-of-way has the potential to pose a hazard to the public, and to increase liability to the licensee. To the extent not prohibited by law, the Licensee shall defend, indemnify, and save harmless the City from and against all Charges to the extent that they arise from, in connection with, or out of this License, or as a result of Licensee's action or inaction in constructing, operating, or maintaining its Telecommunications Facilities in the City of Durham, or from, in connection with, or out of any claim brought by any reseller, lessee or other user of Licensee's Telecommunications Facilities, as a result of any damage to Licensee's Telecommunications Facilities by the City that occurs as a result of or in connection with any public improvements.

Alternatives

City Council can choose not to approve the request.

Financial Impact

The Licensee will assume the cost of installation, maintenance, and repair, including the cost of repairs to the street and pavement associated with the installation, maintenance, and repair of the Telecommunications Facilities.

SDBE Summary

The SDBE Summary is not applicable for this update.