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MEMORANDUM TRANSPORTATION & DEVELOPMENT DEPARTMENT
MEMO NO. TDA11-061

DATE: MARCH 8, 2012

TO: MAYOR AND CITY COUNCIL

THRU: RICH DLUGAS, CITY MANAGER *RD*
 PAT MCDERMOTT, ASSISTANT CITY MANAGER *[Signature]*
 R.J. ZEDER, TRANSPORTATION AND DEVELOPMENT DIRECTOR *RJZ*

FROM: MARGARET COULTER, REGULATORY AFFAIRS MANAGER *[Signature]*

SUBJECT: ORDINANCE NO. 4354, APPROVING A RENEWAL TO THE AGREEMENT FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES EXECUTED MAY 15, 2007 BETWEEN ZAYO GROUP, LLC AND THE CITY OF CHANDLER

RECOMMENDATION: Staff recommends approval of Ordinance No. 4354, Approving a Renewal to the Agreement for the Use of Facilities in the City's Rights-of-Way and Public Places Executed May 15, 2007 between Zayo Group, LLC and the City of Chandler.

BACKGROUND: The City granted AGL Networks, LLC (AGL) an Agreement for the Use of Facilities in the City's Rights-of-Way and Public Places, executed May 15, 2007, (Agreement) in order to install, operate and maintain an underground optical fiber-based communications network in the public right-of-way of the City with a Class 5 License (Fiber Optic Cable, Interstate Services and Other Communication Facilities excluded from the definition of "Telecommunications"). This Agreement was amended on May 17, 2011 to account for the change in ownership for the company to Zayo Group, LLC, as well as setting terms for the company to operate under both a Class 4 and Class 5 License. This Ordinance renews the Agreement for an additional 5-year term.

FINANCIAL IMPLICATIONS: No changes.

PROPOSED MOTION: Move to approve Ordinance No. 4354, Approving a Renewal to the Agreement for the Use of Facilities in the City's Rights-of-Way and Public Places Executed May 15, 2007 between Zayo Group, LLC and the City of Chandler.

Attachments: Ordinance 4354, Exhibit A

ORDINANCE NO. 4354

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING A RENEWAL TO THE AGREEMENT FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OF-WAY AND PUBLIC PLACES EXECUTED MAY 15, 2007 BETWEEN ZAYO GROUP, LLC AND THE CITY OF CHANDLER

WHEREAS, the City Council approved Ordinance 3786 authorizing an Agreement for the Use of Facilities in the City's Right-of-Way and Public Places, executed May 15, 2007, between the City of Chandler (CITY) and AGL Networks, LLC (AGL) for a Class 4 License (Agreement); and

WHEREAS, the City Council approved Ordinance 4295, an Amendment to the Agreement on May 17, 2011, authorizing Zayo Group, LLC (COMPANY) to be the Successor to AGL in this Agreement, and allowing its existing and future communications system a Class 4 License and as a Class 5 License as applicable, and establishing a new fee structure (Amendment); and

WHEREAS, Section 5 of the Agreement allows the renewal for additional five (5) year terms upon the mutual agreement of the parties, and

WHEREAS, both the CITY and COMPANY wish to exercise the option to extend the Agreement; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AS FOLLOWS:

SECTION I: That the Mayor of the City of Chandler is herewith authorized to execute this Ordinance as detailed in Exhibit A, renewing the term for an additional five (5) years pursuant and authorizing automatic extensions of two additional five (5) year terms.

SECTION II: That the various City officers and employees be and they are hereby authorized and directed to perform all acts necessary to give effect to this Ordinance.

SECTION III: This Ordinance shall become effective thirty days from and after its final adoption.

INTRODUCED AND TENTATIVELY ADOPTED by the City Council of the City of Chandler, Maricopa County, Arizona, this ___ day of _____, 2012.

ATTEST:

CITY CLERK

MAYOR

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ___ day of _____, 2012.

ATTEST:

MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Ordinance No. 4354 was duly passed and adopted by the City Council of the City of Chandler, at a regular meeting held on the ___ day of _____, 2012 and that a quorum was present thereat.

City Clerk

Published:

APPROVED AS TO FORM:

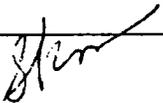


Exhibit A

AMENDMENT TWO

AMENDMENT TWO TO THE AGREEMENT BETWEEN ZAYO GROUP, LLC (AS SUCCESSOR TO AGL NETWORKS, LLC) AND THE CITY OF CHANDLER FOR THE USE OF FACILITIES IN THE CITY'S RIGHTS-OR-WAY AND PUBLIC PLACES TO AUTHORIZE AN EXTENSION OF THE AGREEMENT FOR A SECOND TERM AND TO AUTHORIZE AUTOMATIC EXTENSIONS FOR TWO ADDITIONAL TERMS UPON SPECIFIED CONDITIONS

This Second Amendment (hereinafter "Amendment") to the Agreement as Amended for the Use of Facilities in the City's Rights-of-Way and Public Places (hereinafter "Agreement") is entered into this ____ day of _____, 2012 ("Amendment Effective Date"), by and between the City of Chandler, Arizona, a political subdivision of the State of Arizona (hereinafter "CITY"), and Zayo Group, LLC and its affiliates (hereinafter "COMPANY"),

WHEREAS, the CITY and AGL Networks, LLC entered into the Agreement on May 15, 2007, as authorized pursuant to Ordinance 3786; and

WHEREAS, on February 23, 2010, AGL Networks, LLC obtained a Certificate of Convenience and Necessity from the State of Arizona and is now a provider of communications, including without limitation local telephone, Telecommunications Services and high-speed data services; and

WHEREAS, on July 9, 2010, AGL Networks, LLC changed its name from AGL Networks, LLC to Zayo Fiber Solutions, LLC and subsequently merged up and into Zayo Group, LLC; and

WHEREAS, WHEREAS, the City Council approved Ordinance 4295, an Amendment to the Agreement on May 17, 2011, authorizing Zayo Group, LLC (COMPANY) to be the Successor to AGL in this Agreement, and allowing its existing and future communications system a Class 4 License and as a Class 5 License as applicable, and establishing a new fee structure (Amendment); and

WHEREAS, Section 5 of the Agreement allows the renewal for additional five (5) year terms upon the mutual agreement of the parties, and

NOW THEREFORE, the Agreement shall be amended as follows:

1. Section 5 of the Agreement as amended is hereby amended to read as follows:

"SECTION 5. TERM OF AGREEMENT.

5.1. Term. The term of this Agreement and duration of the rights privileges and authorizations granted hereunder shall be for five (5) years from May 15, 2012, through May 14, 2017.

5.2 Automatic Renewal. This term shall automatically be extended for two (2) additional five-year terms on the anniversary date of the extension of the Agreement unless either party requests a change, in writing, to the Agreement in which case: 1) if the parties agree to change, in writing, a provision of the contract which either party considers substantive, the proposed amendment will be subject to City Council approval, or 2) if the parties cannot agree to a change, the contract will expire at the end of the then current term unless terminated pursuant to the terms of the Agreement.”

2. Except as expressly stated herein, the terms of the Agreement remain unchanged and in full force and effect. To the extent that the terms of this Amendment conflict with any term or condition of the Agreement as amended, the terms of this Amendment shall prevail.

This Amendment executed this ____ day of _____, 2012:

CITY OF CHANDLER,
an Arizona municipal corporation

ZAYO GROUP, LLC

Mayor

By: _____
Title: _____

Attest:

Attest:

City Clerk

Title: _____

APPROVED AS TO FORM:

City Attorney 