



City of San Leandro

Meeting Date: February 5, 2018

Staff Report

File Number: 18-028

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.F.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Lianne Marshall
Assistant City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution to Approve a Second Amendment to the License Agreement Between the City of San Leandro and San Leandro Dark Fiber LLC.

SUMMARY AND RECOMMENDATIONS

In Sept. 2012, the City was awarded a \$2,121,000 grant from the U.S. Department of Commerce's Economic Development Administration (EDA) to assist in the construction of conduit for expanding the City's fiber optic broadband network.

While the original grant application anticipated a 7.4-mile expansion, the grant has successfully drawn to a close with the addition of 9.4 miles to the City's fiber optic conduit. To complete the grant closure, the EDA requires amendment of the License Agreement to reflect two additional items.

Staff requests approval of a Resolution approving a Second Amendment to the License Agreement between the City of San Leandro and San Leandro Dark Fiber LLC.

BACKGROUND

In 2011, the City of San Leandro entered into a License Agreement with San Leandro Dark Fiber, LLC (SLDF) to build a fiber optic infrastructure that would accelerate the City's economic goals of attracting new businesses and investment.

In addition to promoting growth and creating jobs in the industrial sector, the extensive conduit network infrastructure also provides the opportunity for schools, the community, and businesses throughout the City to easily connect to high-speed internet communication service.

SLDF has already installed several connections off the main fiber network and has completed plans to install fiber in the Marina expansion with the emergence of customers along that route.

The San Leandro Unified School District has used various portions of the conduit network to connect all District campuses to their high-speed data network.

The conduit network has attracted new investment opportunities in both the industrial and downtown areas (for example, Gate 510 and the San Leandro Tech Campus). The expansion loop will attract and create new, numerous business opportunities specifically related to broadband and innovation. Examples of ongoing projects that the expansion fiber will support include:

- Climatec/Paradox Engineering Smart Lighting Project: In addition to thousands of street and building lights being replaced with energy-saving LED lights, the City is one of less than 100 U.S. cities with a “smart city” platform. This platform provides the City with an open technology architecture that allows a limitless number of applications (e.g. traffic, environmental monitoring, energy, etc.) and data to be developed, implemented and integrated into a single system.
- Implementation of the City’s first public Wi-Fi hotspots (“WiFiber”), with the goal of developing Wi-Fi access across San Leandro. This is a key “digital divide” asset, eventually enabling San Leandro residents across all economic groups with access to fast broadband.
- National recognition of San Leandro as a leader in “smart city” development through its work with organizations like U.S. Ignite, Smart Cities Council, Next Century Cities and the Global Cities Team Challenge.

Analysis

The proposed amendments to the License Agreement are summarized follows:

- With respect to the Expanded Property, neither Party under the License Agreement is allowed to transfer or assign its rights without the prior consent of the other Party and the United States Department of Commerce, Economic Development Administration.
- Addition of a non-discrimination clause based on race, color, national origin, religion, sex, age or physical or mental disability.

Both changes were requested by the EDA to meet their requirements for grant-funded projects. Neither City staff nor SLDF have any concerns with the requested revisions, which will not alter the fundamental relationship between the two parties.

Applicable General Plan Policies

- Policy ED-1.1: Leveraging San Leandro’s Assets
- Policy ED-1.2: Maintaining San Leandro’s Competitive Edge
- Policy ED-3.2: Business Infrastructure
- Policy ED-3.4: Lit San Leandro - Expansion and Smart City Action Strategy

Legal Analysis

The subject Amendment has been reviewed and approved by the City Attorney.

Fiscal Impacts

No fiscal impacts are associated with the recommended approval.

Attachment(s) to Staff Report

- Resolution Approving a Second Amendment to License Agreement Between the City of San Leandro and San Leandro Dark Fiber LLC

Attachment(s) to Resolution

- Attachment 1: Second Amendment to License Agreement Between the City of San Leandro and San Leandro Dark Fiber LLC

PREPARED BY: Deborah Acosta, Chief Innovation Officer, Community Development Dept.



City of San Leandro

Meeting Date: February 5, 2018

Resolution - Council

File Number: 18-029 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Lianne Marshall
Assistant City Manager

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Approving a Second Amendment to the License Agreement
Between the City of San Leandro and San Leandro Dark Fiber LLC

WHEREAS, an agreement between the City of San Leandro and San Leandro Dark Fiber LLC, a copy of which is attached, was presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said amendment to the agreement is hereby approved and execution by the City Manager is hereby authorized.

EXHIBIT G

SECOND AMENDMENT TO LICENSE AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND SAN LEANDRO DARK FIBER LLC

THIS SECOND AMENDMENT TO LICENSE AGREEMENT (this “**Second Amendment**”) is entered into effective as of February 5, 2018 (“**Effective Date**”) by and between the City of San Leandro, a municipal corporation (“**City**”) and San Leandro Dark Fiber LLC, a limited liability company (“**SL Dark Fiber**” or “**SLDF**”). This Second Amendment shall be appended to the Original License, and the First Amendment to License Agreement dated March 4, 2015, also known as Exhibit F and shall be incorporated into the Original License. All Sections and provisions of the Original License, and the First Amendment remain unchanged and shall apply to the Project, including in the Expanded Property, unless this Second Amendment expressly sets forth a rate, term, or condition specific to the Project installed in the Expanded Property, or expressly changes a term, provision, or condition in the Original License and First Amendment. The City and SL Dark Fiber are sometimes hereinafter referred to individually as “**Party**” and collectively as the “**Parties.**”

Pursuant to the covenants below, all of which constitute good and valuable consideration, the Parties agree as follows:

1. Article XII of the Original License, Section 12.9 is amended in its entirety to read as follows:

Successors and Assigns; No Third-Party Beneficiaries. This License shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns provided however, that neither Party shall transfer or assign (either directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise) any of such Party’s rights hereunder by operation of law or otherwise without the prior written consent of the other Party and any such transfer or assignment without such prior written consent shall be void. Subject to the immediately preceding sentence this License is not intended to benefit and shall not run to the benefit of or be enforceable by any other person or entity other than the Parties and their permitted successors and assigns. This provision shall not preclude SL Dark Fiber from contracting with affiliates or third parties to provide telecommunications services using SL Dark Fiber property in the Project.

With respect to the Expanded Property, neither Party shall transfer or assign (either directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise) any of such Party’s rights hereunder by operation of law or otherwise without the prior written consent of the other Party and the United States Department of Commerce, Economic Development Administration, as required by the Award, and any such transfer or assignment without such prior written consent shall be void.

2. Article XII of the Original License is amended to add a new Section 12.11, which shall read as follows:

12.11. Purpose and Non-Discrimination. The Expanded Property was improved with a grant award from the United States Department of Commerce, Economic Development Administration (“EDA”), Project No. 07-01-06893 (the “Award”). The Expanded Property must be used in a manner consistent with the authorized general and special purpose of the Award and the Award terms and conditions. This includes, but is not limited to the Parties, which shall not discriminate in and during the provision of any services, or execution of any terms or provisions under this or any agreement with the City against any qualified employee or applicant for employment because of race, color, national origin, religion, sex, age or physical or mental disability.

3. All other unchanged or unaffected terms and provisions of the Original License, and the First Amendment to License shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Second Amendment to the License as of the date first written above.

City of San Leandro

SL Dark Fiber, a limited liability company

By: _____
Chris Zapata, City Manager

By: _____
J. Patrick Kennedy, SL Dark Fiber Managing Member

APPROVED AS TO FORM:

By: _____
Richard D. Pio Roda, City Attorney

ATTEST:

By: _____
Tamika Greenwood, City Clerk

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