

ORDINANCE NO. 4586

AN ORDINANCE to initiate and establish the process for granting a franchise by the City of Alexandria, Virginia, to use the public rights-of-way to provide Telecommunications Services, excluding Cable Services in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the City of Alexandria proposes to grant a franchise, in the manner prescribed by law, for Telecommunications Services, excluding Cable Services, permitting the design, construction, maintenance, upgrade, repair, removal and operation of a system, including a fiber-to-the-premises network, in the public rights-of-way, as set forth in the following proposed franchise ordinance:

ORDINANCE NO. _____

AN ORDINANCE to grant to _____, its successors and assigns, a franchise, under certain conditions, permitting the grantee to use the public rights-of-way in the City of Alexandria, for the design, construction, maintenance, upgrade, repair, removal and operation of a system to provide Telecommunications Services, excluding Cable Services, in the City.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That this Franchise is hereby granted to _____ hereinafter referred to as "Grantee," its successors and assigns, to permit the Grantee to design, construct, maintain, upgrade, repair, remove and operate a system to provide Telecommunications Services, excluding Cable Services, using the public rights-of-way in the City.

Section 2. That the said Franchise is awarded to the Grantee after public notice and invitation for bids, as required by law, pursuant to Section 2 of Ordinance No. _____, and after the invitation for bids was duly closed and all bids were fully and carefully investigated and evaluated.

Section 3. That the Grantee be, and hereby is, granted a Franchise for ____ years to design, construct, maintain, upgrade, repair, remove and operate a system to provide Telecommunications Services, excluding Cable Services, using the public rights-of-way in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Franchise Agreement attached hereto and incorporated fully herein by reference, together with all applicable laws and regulations of the City of Alexandria, the Commonwealth of Virginia and the United States, and any regulatory agency having jurisdiction, including, without limitation, with the following conditions:

1. *Each year an updated map of all facilities within the City, existing and proposed, showing locations, scheduled construction and service dates, and such additional information as the City Manager may specify in his reasonable discretion, shall be filed with the City's Department of Transportation and Environmental Services.*

2. *All necessary permits shall be obtained for each and every excavation or installation, including but not limited to boring in and/or under public rights-of-way or other public place.*

3. *In the event the relocation, construction, reconstruction, maintenance or repair by the City, the Commonwealth of Virginia or the Washington Metropolitan Area Transit Authority of any facilities or services is necessary or desirable, and it is necessary to alter or relocate, either permanently or temporarily, any of the Grantee's property in the public rights-of way or other public property in order to accomplish same, the Grantee will, after reasonable notice, move, alter or relocate its property at its own cost and expense, and should the Grantee fail to comply with such notice, its property may be removed, altered or relocated by the City, Commonwealth or Washington Metropolitan Area Transit Authority at the cost of the Grantee and without liability for any resulting damage. The Grantee will do everything reasonably necessary, in a timely manner, to prevent any delays in construction projects of the City, the Commonwealth or the Washington Metropolitan Area Transit Authority.*

4. *This Franchise may be assigned or transferred; provided, however, that no such assignment or transfer shall be effective without the prior written consent of the City, which consent will not be unreasonably withheld.*

5. *The Grantee will obtain liability insurance to the satisfaction of the City Attorney, which insurance shall name the City as an additional insured.*

6. *The Grantee will not use the privileges granted by this Franchise to provide the functional equivalent of a cable system or Cable Services as defined in sections 9-3-17 and 9-3-18 of the Code of the City of Alexandria (1950), as amended.*

7. *The Grantee shall protect all property of the City or any other person during any work of designing, constructing,*

maintaining, repairing, upgrading, removing or operating its system in or adjacent to the public rights-of-way or other public place, and shall fully restore, in kind, any property damaged or destroyed during any such work. In the event the Grantee and any property owner are unable to agree on a remedy, the Grantee agrees to abide by the determination of the City as to compensation or restoration.

8. That nothing in this Franchise shall increase or strengthen the rights that other franchisees may have. The City shall have no liability to the Grantee for exercising any rights the City may have in general or under its franchises with other franchisees, regardless of the effect of such exercise on the Grantee.

9. The Grantee shall remove its property at its own expense at the expiration or termination of this Franchise or any extension hereof

Section 4. That the City Manager be and hereby is authorized to execute such documents as may be required to effectuate the Franchise hereby granted.

Section 5. That the City Clerk be and hereby is authorized to attest the execution of said documents and to affix thereon the official seal of the City of Alexandria, Virginia.

Section 2. That as soon as this ordinance has been finally passed, the City Clerk shall cause to be advertised once a week for four successive weeks in a newspaper published in the City of Alexandria, a descriptive notice of the proposed ordinance contained in Section 1 of this ordinance, and, in addition thereto, shall by such advertisement invite bids for the Franchise proposed to be granted by such proposed ordinance, by publishing with the descriptive notice of such ordinance a notice which shall be in substantially the following form:

NOTICE

BIDS ARE INVITED BY THE CITY OF ALEXANDRIA, VIRGINIA, FOR THE GRANT OF A FRANCHISE PERMITTING THE FRANCHISEE TO USE THE PUBLIC RIGHTS-OF-WAY IN THE CITY FOR THE DESIGN, CONSTRUCTION, MAINTENANCE, REPAIR, UPGRADE, REMOVAL AND OPERATION OF A SYSTEM TO PROVIDE TELECOMMUNICATIONS SERVICES, EXCLUDING CABLE SERVICES, FOR THE BENEFIT OF RESIDENTS, BUSINESSES AND GOVERNMENT IN THE CITY. DETAILED CONDITIONS AND SPECIFICATIONS FOR THE FRANCHISE ARE ON FILE IN THE OFFICE OF THE DIRECTOR OF CITIZEN ASSISTANCE, 301 KING STREET, ALEXANDRIA VIRGINIA 22314.

THE TERM OF THE FRANCHISE IS NEGOTIABLE, BUT IT SHALL BE FOR A MINIMUM OF FIVE YEARS.

ALL BIDS ARE TO BE SUBMITTED IN WRITING AND DELIVERED TO ROSE WILLIAMS BOYD, DIRECTOR, OFFICE OF CITIZEN ASSISTANCE, 301 KING STREET, ALEXANDRIA VIRGINIA 22314, ON OR BEFORE MAY 18, 2009 AT 3:00 PM. EASTERN TIME. AT THAT TIME BIDS SHALL BE PUBLICLY OPENED AND BIDDERS IDENTIFIED.

IN ADDITION, IDENTIFICATION OF THE BIDDERS SHALL BE ANNOUNCED IN OPEN SESSION OF THE CITY COUNCIL OF THE CITY OF ALEXANDRIA IN THE COUNCIL'S CHAMBERS, CITY HALL, 301 KING STREET, SECOND FLOOR, ALEXANDRIA, VIRGINIA 22314, ON MAY 26, 2009, AT 7:00 P.M. AT THAT TIME, THE MAYOR SHALL REFER THE BIDS RECEIVED TO THE CITY MANAGER TO EVALUATE, REVIEW AND CONSIDER IN THE MANNER PRESCRIBED BY LAW, INCLUDING THE SELECTION OF, AND NEGOTIATION OF A FRANCHISE AGREEMENT WITH, A PREFERRED BIDDER. AS SOON THEREAFTER AS PRACTICABLE, THE CITY MANAGER WILL RECOMMEND THE SUCCESSFUL BIDDER, AND PRESENT THE NEGOTIATED FRANCHISE AGREEMENT, FOR CONSIDERATION AND APPROVAL BY CITY COUNCIL.

THE CITY RESERVES THE RIGHT IN THE CITY MANAGER'S SOLE DISCRETION TO REJECT ANY AND ALL BIDS; TO TERMINATE NEGOTIATIONS AT ANY STAGE OF THE SELECTION PROCESS, AND TO REISSUE THE REQUEST FOR BIDS WITH OR WITHOUT MODIFICATION.

THE DESCRIPTIVE NOTICE OF THE PROPOSED FRANCHISE ORDINANCE IS AS FOLLOWS:

The proposed ordinance will grant a franchise, under certain conditions, permitting the grantee to use the public rights-of-way in the City of Alexandria, for the design, construction, maintenance, repair, upgrade, removal and operation of a Telecommunications System, excluding Cable Services, for the benefit of residents, businesses and government in the City. (Complete text of ordinance available in office of the city clerk.)

Section 3. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: April 18, 2009