

ORDINANCE NO. 5387

AN ORDINANCE to initiate and establish the process for soliciting and granting non-exclusive Franchise proposals by the City of Alexandria, Virginia, for use of the public rights-of-way from broadband providers to design, construct, install, operate, maintain, repair, upgrade, remove and operate a fiber to the premises broadband network for offering broadband internet access to City of Alexandria residents and businesses and related infrastructure.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the City of Alexandria proposes to grant non-exclusive Franchise(s) in the manner prescribed by law, for use of the public rights-of-way by broadband providers to design, construct, install, operate, maintain, repair, upgrade, remove and operate a fiber to the premises Broadband Internet access Network for offering Broadband Internet access to City of Alexandria residents and businesses and related infrastructure in the public rights-of-ways, 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-ways in the City of Alexandria for the design, construction, operation, installation, maintenance, repair, upgrade, removal and operation of a fiber to the premises broadband network for offering broadband internet access and related infrastructure 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, install, maintain, repair, upgrade, remove and operate a fiber to the premises broadband internet access network and related infrastructure in the public rights-of-ways in the City in accordance with the terms and conditions set forth in the Franchise Agreement for Use of the Public Rights-of-Way to Provide Broadband Internet Service, attached hereto as Exhibit A and fully incorporated herein by reference.

Section 2. That 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 carefully investigated and evaluated. More than one franchise may be awarded pursuant to this Ordinance.

Section 3. That the Grantee be, and hereby is granted a franchise for an initial term of 20 years with automatic extension of up to 3 additional periods of 5 years each, to design, construct, install, maintain, repair, remove and operate specified broadband facilities and related infrastructure in the public rights-of-ways in the City. The Grantee shall strictly comply with the terms of this Ordinance and with the Franchise Agreement for Use of the Public Rights-of-Way to Provide Broadband Internet Service (Exhibit A), 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. 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-ways or other public places.*
- 2. 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-ways or other public property in order to accomplish the same, the Grantee shall, 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 the Metropolitan Area Transit Authority at the cost of the Grantee and without liability for any resulting damage. The Grantee shall do everything reasonably necessary, in a timely manner, to prevent any delays in construction project of the City, the Commonwealth or the Washington Metropolitan Area Transit Authority.*
- 3. 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.*
- 4. The Grantee will obtain liability insurance to the satisfaction of the City Attorney, which insurance shall name the City as an additional insured.*
- 5. 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.*
- 6. The Grantee shall protect all property of the City or any other person during any work of designing, constructing, operating, installing, maintaining, repairing, upgrading or removing its system in or adjacent to the public rights-of-ways or other public place, and shall fully restore, in kind, any property damaged or destroyed during any such work.*

7. *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.*
8. *The Grantee shall remove its property at its own expense at the expiration or termination 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 two successive weeks in a newspaper published in the City of Alexandria, Virginia, 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(s) 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 IN THE FORM OF A PROPOSED AGREEMENT ARE INVITED BY THE CITY OF ALEXANDRIA, VIRGINIA, FOR THE GRANT OF A NON EXCLUSIVE FRANCHISE PERMITTING FRANCHISEE(S) TO USE THE PUBLIC RIGHTS-OF-WAYS IN THE CITY FOR THE DESIGN, CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR, UPGRADE, REMOVAL AND OPERATION OF A BROADBAND NETWORK FOR OFFERING INTERNET ACCESS AND RELATED INFRASTRUCTURE IN THE CITY.

THE TERMS AND CONDITIONS FOR THE FRANCHISE ARE ATTACHED TO THE ORDINANCE AND ARE ON THE CITY'S WEBSITE ALEXANDRIAVA.GOV

THE TERM OF THE FRANCHISE IS NEGOTIABLE BUT SHALL BE FOR AN INITIAL TERM OF 20 YEARS WITH UP TO 3 ADDITIONAL EXTENSIONS OF 5 YEARS EACH.

ALL BIDS ARE TO BE SUBMITTED IN WRITING IN THE FORMAT OF THE FRANCHISE AGREEMENT FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS TO PROVIDE BROADBAND INTERNET SERVICE ATTACHED HERETO AS EXHIBIT A AND ADDITIONAL DOCUMENTS REQUIRED BY TERMS AND SPECIFICATIONS. THE BID DOCUMENTS ARE TO BE SENT TO LAURA TRIGGS Laura.Triggs@alexandriava.gov

E-MAIL, OR MAIL 301 KING STREET ROOM 4300 AND MUST BE RECEIVED ON OR BEFORE NOON EASTERN TIME ON THURSDAY DECEMBER 30, 2021. 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 CHAMBERS, CITY HALL, 301 KING STREET, SECOND FLOOR, ALEXANDRIA, VIRGINIA, 22314 ON JANUARY 11, 2022 AT 7 P.M. EASTERN TIME. IN THE EVENT THAT THE JANUARY 11, 2022 CITY COUNCIL MEETING, AND SUBSEQUENT MEETINGS OF CITY COUNCIL, ARE HELD ELECTRONICALLY DUE TO THE COVID-19 PANDEMIC EMERGENCY AND VIRGINIA CODE SECTION 2.2-3708.2(a)(3), THE CONTINUITY OF GOVERNANCE ORDINANCE ADOPTED BY THE CITY COUNCIL ON JUNE 20, 2020, AND/OR SECTION 4.0-00(G) IN HB29 AND HB30 TO UNDERTAKE ESSENTIAL BUSINESS, NOTICE WILL BE PROVIDED. AT THE JANUARY 11, 2022. 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 FRANCHISE AGREEMENT(S) WITH ONE OR MORE PREFERRED, RESPONSIVE BIDDER(S). AS SOON THEREAFTER AS PRACTICABLE, THE CITY MANAGER WILL RECOMMEND THE SUCCESSFUL BIDDER(S) AND PRESENT THE NEGOTIATED FRANCHISE AGREEMENT(S), 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 nonexclusive franchise or franchises, under certain conditions, permitting the grantee to use the public rights-of-ways in the City of Alexandria, for the design, construction, installation, maintenance repair, upgrade, removal and operation of a fiber to the premises broadband internet network specified and related infrastructure. (Complete text of the ordinance is available in the office of the city clerk).

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

JUSTIN M. WILSON

Mayor