

AGENDA



Thursday, August 21, 2008

**Telecommunications & Regulatory Affairs
RECOMMENDATION FOR COUNCIL ACTION****Item No. 32**

Subject: Approve an ordinance granting ZNET Texas, LP a license for placement of facilities in the public right of way.

Amount and Source of Funding: \$275,641 in Fiscal Year 2007-2008 General Fund Revenue

Fiscal Note: No fiscal note required.

For More Information: Rondella Hawkins, TARA Manager; 512-974-2422

Prior Council Action: Original license agreement granted by Ordinance No. 000518-52.

The proposed non-exclusive license agreement granted under Chapter 14-11 of the City Code extends ZNET's right to occupy a portion of the City's right-of-way to provide conduit space to accommodate telecommunications service providers to provide competitive services in the downtown area.

ZNET Texas, LP, is a utility construction project management partnership based out of Metairie, Louisiana. In 2000, the City Council approved Ordinance No. 000518-52 authorizing the placement of 10 underground fiber optic conduit systems in the City's downtown right-of-way for sale to telecommunications providers to reduce the number of street cuts and the amount of traffic disruption and to speed the deployment of communications networks. All 10 were licensed to ZNET.

The original annual fee structure was based on per linear foot with an annual 4% escalator, regardless of the number of conduit systems owned by ZNET. The initial term of the agreement expired in May of 2007; ZNET did not notify the City of exercising the option to renew the terms of the contract for an additional 3 years. At the time the Agreement expired, ZNET owed the City for past due license fee payments and penalties.

TARA made multiple attempts to collect the past due amount owed by ZNET. Since ZNET had not sold any of the remaining 4 conduit systems, they were not able to pay any amounts owed due to the telecommunications slowdown in 2002-2003. Late last year, ZNET notified the City of a pending sale of one conduit system and wanted to discuss a new license agreement with a new fee structure. A transfer of conduit requires City approval, which the City could withhold due to their delinquency of fees.

The proposed new annual license fee is \$20,800 with a 4% annual escalator. This amount represents a pro rata formula for the four remaining systems under the original linear foot fee structure. This new fee reflects ZNET's business model in terms of ROW compensation compared to the linear foot fee structure under the original license agreement. The license allows for a proportionate reduction of the annual fee if ZNET sells a conduit system to a telecommunications provider. The entity that purchases the conduit system will begin remitting a fee based on a per-access line method as prescribed by Chapter 283 of the Texas Local Government Code.

A key new provision of the proposed new agreement is a \$100,000 Letter of Credit requirement which builds in a vehicle of protection for the City for future delinquencies. This provision did not exist under the original agreement. Other terms of this new license agreement are:

- The initial term is 10 years with one, three-year renewal option;
- Requires City approval for transfer of conduit system.
- Late fee provision.
- Liability insurance; and
- Indemnification

Typically, this item would be presented to the Emerging Technology and Telecommunications Council Committee for a recommendation to Council as required by City Code. However, the past several monthly meetings of the committee have been cancelled. As allowed by the City Code, the City Manager is placing this item on the Council agenda with the understanding that the back-up material is sufficient to provide the Council with a full explanation of the item. Upon approval, staff will collect the delinquent fees from ZNET and execute a new license agreement allowing ZNET to proceed with the sale of one conduit system.