

AGENDA ITEM #: \_\_\_\_\_

DATE: December 2, 2019

CAR #: 2019-6831



## CITY COUNCIL ACTION REPORT

**SUBJECT:** Level 3 Communications License Agreement

**STAFF PRESENTER(S):** Linda Beals, Real Estate Coordinator

**OTHER PRESENTER(S):** None

**Summary:** Council to consider approval of a five-year license agreement between the city and Level 3 Communications to install, operate and maintain a fiber optic communication system within the city.

**Recommendation:**

ADOPT RESOLUTION NO. 2019-2014 AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO EXECUTE THE LICENSE AGREEMENT BETWEEN THE CITY OF GOODYEAR AND LEVEL 3 COMMUNICATIONS LLC, A DELAWARE LIMITED LIABILITY COMPANY, PROVIDING FOR THE CITY MANAGER OR HER DESIGNEE TO EXECUTE AMENDMENTS TO THE LICENSE AGREEMENT ASSOCIATED WITH MINOR SCRIVENER ERRORS AND TO ENTER INTO SEPARATE AGREEMENTS FOR IN-KIND EXCHANGES OF FIBER, CONDUIT AND/OR JOINT TRENCHING FOR THE CITY'S USE.

**Fiscal Impact:** Level 3 Communications LLC, a Delaware limited liability company (Level 3) will fund the installation, operation and maintenance of the fiber network within the city of Goodyear. The license agreement provides for \$0.89 per linear foot annually for the use of the rights-of-way in accordance with agreement terms. Level 3 is in the process of finalizing the additional fiber line plans. The new license will include both the existing and proposed new added lines. The total amount of linear feet subject annual payment has not been finalized. A portion of the fiber lines maybe subject to the City's transaction privilege tax. The license agreement provides the parties with the ability to enter into a separate agreement for in-kind exchanges of fiber, conduit, and/or joint trenching for the city's use. No city expenditure is required to issue the license agreement.

### Background and Previous Actions

Level 3 is requesting a fiber license agreement from Goodyear to install, operate and maintain the fiber optic network within city rights-of-way. The locations planned for connections are throughout the city limits of Goodyear.

The license includes the following:

1. The initial term of the license is for five years.
  - a. Renewal fee is \$2,500 every five years
2. This is a non-exclusive license that allows the city to issue multiple licenses to vendors.
3. Level 3 will be required to obtain permits from the city through our standard process.
4. Level 3 is liable for damages to rights-of-way and other utilities.
5. The amount of new cable to be placed within the city rights-of-way is being finalized by Level 3.
6. The agreement provides the ability for the parties to enter into a separate agreement to offset the annual fee with in-kind exchanges of fiber, conduit, and/or joint trenching for the city's use.

## **Staff Analysis**

The license agreement will allow Level 3 to operate a fiber network within the city. This network will be used by various businesses operating within the city. The license will grant the necessary rights-of-way access to enable the required permitting and inspections for installation, operation and maintenance of the network.

The annual fee of \$0.89 per linear foot in the license agreement is consistent with other fiber licenses recently entered into by the city. As with other agreements, we have provided alternative language which allows for the exchange of in-kind services to offset the annual fee. However, since Level 3 is still working through their design process, any in-kind services will require a separate agreement. This agreement will also include the payment of outstanding fees owed by Level 3 related to the prior license agreement which has expired. This amount is in the process of being calculated and will be based upon updated mapping to be provided by Level 3. All outstanding fees associated with Level 3's prior license for the periods of 2017-2018 and 2018-2019 will be paid by December 31, 2019.

## **Attachments**

1. Resolution 2019-2014
2. License Agreement