



Date of Council Meeting: June 14, 2016

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: License Agreement with AT&T Corporation

Staff Contact: Barbara Notar, Town Attorney
Calvin Grow, Transportation Engineer

Council Action Requested: Approval of a Renewal of License Agreement between the Town of Leesburg and AT&T Corporation for telecommunication facilities in Town Right of Way.

Staff Recommendation: Staff supports the proposed Renewal of License Agreement to authorize AT&T continued use the Town Right-of-Way for telecommunication purposes (fiber optic cable).

Commission Recommendation: Not applicable.

Fiscal Impact: AT&T Corporation will pay the Town an annual fee \$4,122.06, based upon the amount of linear feet that is needed for the next five (5) years in order to continue to utilize the Town right of way.

Work Plan Impact: None.

Executive Summary: AT&T Corporation seeks to renew the current license agreement with the town in order to continue to operate its facilities in its current location.

Background: AT&T's original License Agreement is dated June 17, 2005 and the first renewal is dated May 26, 2011. The term of the License Agreement shall be for five (5) years with a renewal period for a like period.

Attachment: Resolution
Draft License Agreement between Town and AT&T Corp.
Exhibit A (Route)

EXHIBIT

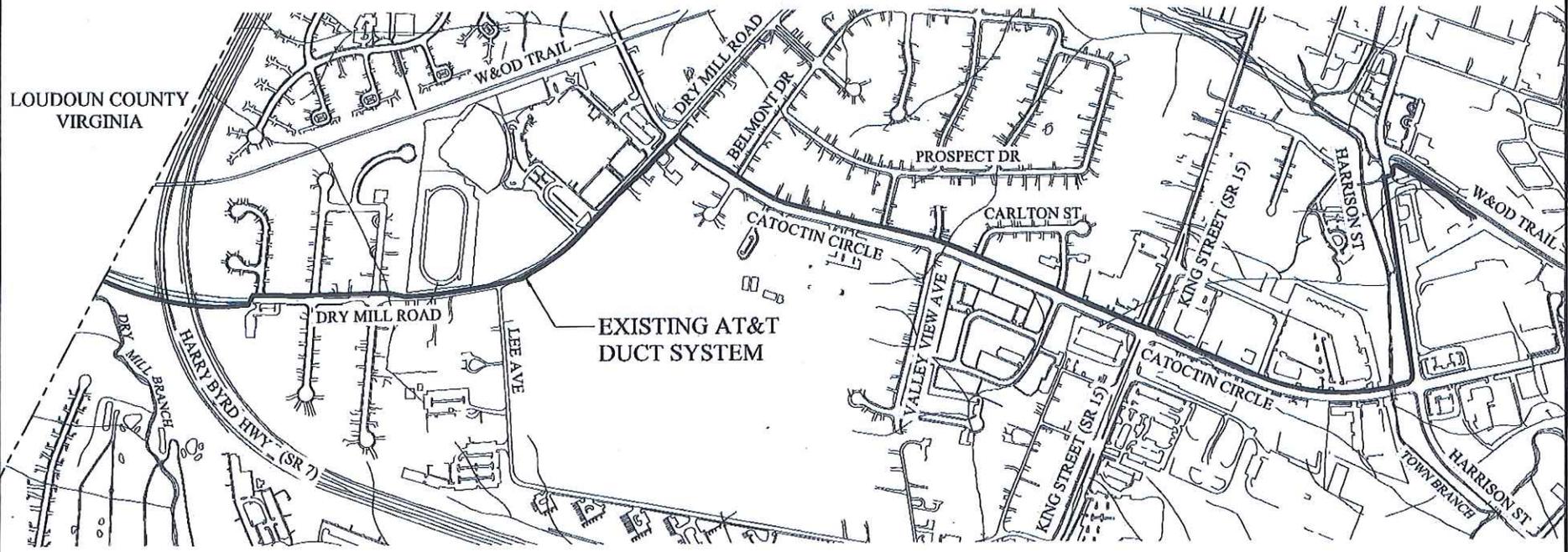
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TOWN OF LEESBURG
LOUDOUN COUNTY
VIRGINIA



LOUDOUN COUNTY
VIRGINIA



TOWN OF LEESBURG EXISTING DUCT SYSTEM LEESBURG, VA			
FILE:	ENGINEER: AT&T	DRAWN BY: CONNECT USA	DATE: 3/22/11
REV:	PN#:	SCALE: N.T.S.	SHEET: 01 OF 01

**SECOND RENEWAL OF LICENSE AGREEMENT
FOR TELECOMMUNICATIONS FACILITIES PASSING THROUGH
THE TOWN OF LEESBURG, VIRGINIA**

THIS SECOND RENEWAL OF LICENSE AGREEMENT, made and entered into this _____ day of _____, 2016, by and between **AT&T CORP.** (the “Provider”), a company authorized to do business in the Commonwealth of Virginia and having a principal place of business at 3450 Riverwood Parkway SE Atlanta GA 30339, and the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation (“Town”), (the Provider and the Town being collectively referred to as the “Parties”).

WITNESSETH

WHEREAS, the Provider, licensed to do business in the Commonwealth of Virginia, has requested that the Town renew its authorization for the Provider to use Town Right-of-Way and public owned property for telecommunications purposes and to operate and maintain a fiber optic cable system (the “Facilities”) that will continue to use the public streets within the Town to a certain extent; and

WHEREAS, the original License Agreement is dated June 17, 2005 and the First Renewal is dated May 26, 2011; and

WHEREAS, the general location and description of the telecommunications facilities that are installed within the Town’s right-of-way (the “Facilities”) are in accordance with certain drawings approved by the Town and attached hereto as Exhibit A (the “Route Map”) and,

WHEREAS, the Provider acknowledges that the primary use of the Town’s Rights-of-Way is for street purposes and that the operation of the Facilities shall not adversely affect such property’s primary use for street purposes; and

WHEREAS, the Town is willing to allow the Provider to use certain Town Rights-of-Way and public owned property subject to the terms and conditions set forth herein.

NOW, THEREFORE, the Town and Provider, for and in consideration of the mutual promises and covenants hereinafter contained, hereby agree and the Town hereby grants unto the Provider for the term and upon the conditions, covenants and agreements hereinafter set forth, permission to use the subject Right-of-Way for the purpose of operating and maintaining the Facilities.

A. Conditions. The Facilities shall be, at all times, maintained, operated and repaired by the Provider as provided herein in a safe manner satisfactory to the Town.

The rights and privileges herein granted to the Provider shall be subject to the rights or interests held by others, if any, in and to the subject Right-of-Way as of the date of this Agreement. The Town makes no representations or warranties, express or implied, concerning the extent of such rights held by others and shall have no responsibility for conflicts with others

as a result of this Agreement. The Town makes no warranties with respect to the subject Rights-of-way but gives the Provider permission to use such rights as are herein provided.

B. Term/Termination. Unless terminated in accordance with the provisions herein, the term of the Agreement shall be five (5) years from the date hereof.

Should the Provider abandon or remove the Facilities without an intention to resume use thereof for a six (6) month period of time, this Agreement shall terminate forthwith at the election of the Town.

The Town may unilaterally terminate the Agreement upon one hundred twenty (120) days' notice in the event the Town determines, in the exercise of its reasonable good faith judgment, that the maintenance and/or operation of the Facilities and the continuation of such License shall adversely affect the health, safety, and welfare of the Town. In such an event, the Town agrees to cooperate with the Provider to attempt to find other suitable space in the public Right of Way of the Town for placement of the Facilities. The Provider agrees, in such cases to relocate its Facilities at its own expense unless otherwise provided by applicable law of the Commonwealth of Virginia and/or by an ordinance of the Town.

Termination of this Agreement shall not relieve or release the Provider or the Town from any liability or obligation, which may have been incurred or assumed by the Provider or the Town hereunder prior to termination.

C. Right-of-Way Application and Permit. The Provider shall pay the Town a Right-of-Way Permit Application fee at the time it files its plans with the Town. The Right-of Way Permit Application fee paid pursuant to Sec. 30-2 of the Town Code shall be in addition to the other fees required hereunder. Additionally, prior to the commencement of any construction, the Provider, if required by the Town, shall deposit with the Town a surety bond equal to 10% of the anticipated construction costs of the Provider's facilities in the Rights-of-Way or public owned property or such other amount determined by the Town. Upon completion of construction, and thereafter until the Provider's facilities have been removed from the Rights-of-Way or public owned property, and for one hundred twenty (120) days thereafter, (unless the Town notifies the Provider that a reasonably longer period shall apply), a Provider shall deposit with the Town and maintain a bond in an amount determined by the Town. The construction bond and removal bond shall serve as security for:

1. The faithful performance by the Provider of all terms, conditions and obligations including the restoration of the Rights of Way or public owned property of this License;
2. Any expenditure, damage, or loss incurred by the Town occasioned by the Provider's breach of this License or its failure to comply with all rules, regulations, orders, permits and other directives of the Town;
3. Payment of all compensation due to the Town, including Permit and Application Fees;
4. The payment of premiums for the liability insurance required pursuant to this License.

D. Compensation

AT&T does not agree that the Town may lawfully demand compensation from AT&T to use the Town's rights-of-way. Nevertheless, without waiving its rights to challenge the lawfulness of such fees under any future agreement or of any such fees in addition to those set forth below, the Provider shall pay to the Town for the usage of the public right-of-way for telecommunications facilities the following amounts:

First Year	\$ <u>4,122.06</u>
Second Year	\$ <u>4,122.06</u>
Third Year	\$ <u>4,122.06</u>
Fourth Year	\$ <u>4,122.06</u>
Fifth Year	\$ <u>4,122.06</u>

The annual fee shall be due to the Town within 45 days after the effective date of this License, and upon each anniversary of that date.

E. Construction Plans and Specifications. Construction of the Facilities shall be performed in accordance with the approved construction plans approved in connection with the right-of-way permit.

F. Confining Construction Activity. During construction, Provider and its contractors and subcontractors shall confine all construction activity, including access and storage, within the applicable areas specified on the approved Plans.

The Provider hereby agrees that the roadway or vehicular traffic shall not be significantly hindered or disturbed during installation, maintenance or operation of the facilities. Prior to construction or repair, other than "Routine Maintenance" as defined below, the Provider shall notify the Town, obtain a Right-of-Way Application and Permit, and, if necessary, proper traffic controls approved by the Town shall be installed. Except in an emergency, the Provider shall notify all residents affected by proposed work prior to the commencement of such work by:

1. Mailing written notice of the Provider's intent to commence work in the area to each address affected by the proposed work; or
2. Hanging door placards on the doors of all affected residences and businesses at least seven (7) days prior to commencement of such work and posting additional notices in

conspicuous places in the area of the proposed work as required to provide reasonable notice to affected residences and business of the proposed work.

The Provider shall perform the work authorized in such Permit in accordance with all requirements of the Town Code, and any subsequent ordinances or regulations currently in force or that may be adopted by the Town regarding excavation work.

G. Excavation. Provider shall not make or begin any excavation or other subsurface activity within the subject Rights-of-Way without first obtaining a Right-of-Way Permit and information concerning the possible location of any underground facility from each and every public utility, Municipal Corporation, or other person having the right to bury underground facilities.

H. Inspection of Construction. The construction of the Facilities is subject to the Town's inspection at all places and all reasonable times to ensure strict compliance with the terms of this Agreement. Such inspections shall be performed in a timely manner so as not to delay the installation of the Facilities.

I. Maintenance and Operation. Routine maintenance shall be defined as any work which can be accomplished utilizing mechanical equipment and/or vehicles operated from a location which is entirely behind the back of curb and in such a manner as to not encroach into the traffic lanes or disrupt traffic flow.

Prior to commencement of any maintenance that is more extensive than routine maintenance, Provider shall submit a proposed maintenance plan and schedule to the Town for approval. The plan and schedule, at a minimum, shall provide a description of work to be performed, a description of equipment, vehicles, work techniques and methods to be used in connection with the maintenance or operation activity, a schedule of when maintenance or operation work will occur with an estimated as to the length of time required to perform the work, and such other information as the Town may need to order to evaluate the proposed maintenance or operation activity.

Provider shall confine all such extensive maintenance and operation activities, including access and storage, within the applicable areas specified in the approved maintenance and operation plans.

J. Restoration. Provider shall, as soon as practicable after the completion of any extensive maintenance activities, restore all areas disturbed during such activities. These areas shall be restored in kind to a condition substantially the same as that which existed prior to Provider performing such maintenance activities, and shall be restored to the reasonable satisfaction of the Town.

K. General Responsibilities of Licensee.

1. Compliance with Applicable Laws and Regulations. Provider shall construct, operate, and maintain its facilities and improvements in accordance with all applicable federal,

state, county and Town laws, orders, rules and regulations existing on the date of this Agreement or enacted thereafter, affecting the installation, maintenance and use of the Facilities, including any necessary Federal Aviation Administration (“FAA”) approval for land located within the Town’s airport, if applicable.

2. Indemnification. Provider agrees to indemnify and hold the Town, its officers, agents, and employees, harmless from and against all claims, losses, expenses, or suits for injuries, death, or damages to real and/or tangible personal property caused by the acts or omissions of Provider, its officers, agent or employees, including the cost of actual reasonable attorney’s fees and other costs. Notwithstanding the provisions of this clause, Provider shall not be liable for nor shall it indemnify the Town for property damage or personal injuries caused by the acts of any third parties over which the Provider has no control, or acts of the Town, its authorized officers, agents, and employees. The Town shall not be liable for damage to the Facilities caused by future road improvements except where the damage to the Facilities is caused by the negligence, gross negligence, or willful misconduct of the Town.

3. Disclaimer of Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall either party be liable for consequential, incidental, punitive, exemplary, or similar damages under this Agreement.

4. Relocation of Facilities. Whenever the Town shall determine that it is necessary in connection with the repair, relocation, or improvement of the public Right-of-Way, the Town may require by written notification that any properties or facilities of the Provider be removed or relocated. This provision also shall apply to instances where Provider has not obtained necessary FAA approval. Within thirty (30) days after receipt of notification, unless the Town extends such period for good cause shown, or because of its reliance on traffic control infrastructure installed by Provider that must be relocated, the Town will extend the relocation time to a sufficient degree that continuity of services to the Town can be assured, the Provider shall remove or relocate its facilities to such place and under such terms and conditions as specified by the Town. The Provider shall bear all expenses associated with the removal and relocation except that the Town will issue, without charge to the Provider, whatever local permits are required for the relocation of the Provider’s facilities. If the Provider does not complete its removal or relocation within thirty (30) days or such other period as authorized by the Town, the Town may take such actions as necessary to effect such removal or relocation at the Provider’s expense. Further, the Provider will be responsible for any additional costs and expenses incurred by the Town as a result of the Provider’s failure to remove or relocate its facilities in a timely manner.

L. Insurance. Provider shall maintain general liability insurance in the amount of Two Million Dollars (\$2,000,000) and shall provide to the Town simultaneously with the execution hereof, a certificate of insurance for such policy, which shall name the Town as an additional insured thereon.

M. Notices. Notices under the Agreement shall be deemed to be properly served if delivered in person or in writing by certified mail, with return receipt requested, to the following addresses or such other places as the parties reasonably designate:

To the Town:

Director of Public Works & Capital Projects
The Town of Leesburg
25 W. Market Street
Leesburg, Virginia 20176

With a copy to:

Town Manager
Town of Leesburg
25 W. Market Street
Leesburg, VA 20176

To Licensee:

AT&T Corp.
3450 Riverwood Parkway, SE Room 162-24
Atlanta, GA 30339
ATTN: Alvin S. Richardson, Network Engineer

With a copy to:

AT&T Corp.
One AT&T Way, Room 3A118A
Bedminster, NJ 07921
ATTN: Legal Department Network Services

In addition to the foregoing, the Provider will provide the name and contact person and an emergency telephone number for maintenance of the Facilities.

N. No Waiver. Nothing contained in the Agreement shall be deemed to waive the requirement of the various codes, regulations, resolutions, and statutes regarding permits, fees to be paid, or manner of construction, operation, or maintenance, including without limitation, the Town's right-of-way permit requirements to work within the right-of-way.

O. Assignment. No assignment of this Agreement or any rights hereunder shall be made without the prior written consent of the Town. However, the Town shall not unreasonably delay, condition, or refuse its consent to any such assignment by the Provider, upon written request by the Provider.

P. Entire License. This License Agreement (and the Exhibits) embodies the entire agreement between the Town and the Provider. It is not to be modified or terminated except as

provided herein or by any written agreements signed by the authorized representatives of both parties. If any provision herein is invalid it shall be considered deleted and shall not invalidate the remaining provisions. The Provider shall not expand or extend its Facilities without approval from the Town Transportation Engineer and a written amendment to this License signed by the Town Manager and authorized agent of the Provider.

Q. Applicable Law. The parties agree that this License Agreement will be governed by the laws of the Commonwealth of Virginia and shall be binding upon the parties and their respective-successors and/or assigns.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first written above.

AT&T Corp.

By _____

Name Alvin S. Richardson

Title Senior Technical Project Manager

Date _____

THE TOWN OF LEESBURG

By _____

Kaj H. Dentler
Town Manager

Date _____

DRAFT 5.24.16

PRESENTED June 14, 2016

RESOLUTION NO. 2016-

ADOPTED June 14, 2016

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A SECOND RENEWAL OF LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND AT&T CORPORATION

WHEREAS, the current License Agreement between the Town of Leesburg, Virginia ("Town") and AT&T Corporation ("AT&T") expires in May of 2016; and

WHEREAS, AT&T currently owns and operates fiber optic cable within the Town's right-of-way; and

WHEREAS, AT&T requests to continue to own and operate its fiber optic cable within the Town's right-of-way; and

WHEREAS, on May 24, 2011, the Town Council authorized the Town Manager to renew a License Agreement with AT&T; and

WHEREAS, the Town Attorney has negotiated a renewal of the current License Agreement with AT&T and the terms contained in the current Renewal of License Agreement are reasonable and equitable and will benefit the Town and the citizens of Leesburg; and

WHEREAS, the Town Attorney has approved the Renewal of License Agreement between the Town and AT&T.

THEREFORE, RESOLVED, by the Council of the Town of Leesburg in Virginia that the Town Manager shall execute the Renewal of License Agreement with AT&T Corporation dated June of 2016.

PASSED this _____ day of June, 2016.

David S. Butler, Mayor
Town of Leesburg

ATTEST:

Clerk of Council