

City of Culver City, California
City Council Agenda Item Report

Meeting Date: 01/22/07		Item Number: <u>A-5</u>	
AGENDA ITEM: Consideration of Adoption of a Resolution Approving an Encroachment Permit Agreement With AboveNet Communications, Inc. for Use of the Public Rights-of-Way on Portions of Centinela Avenue, Bristol Parkway, and Slauson Avenue and Including an Authorization to Enter Into an Agreement with AboveNet Communications, Inc. to Install Conduit for Fiber Optic Communications For the New Fire Station #3 Site.			
Contact Person/Dept.: Andy O'Connell/PW Dept		Phone Number: 310.253.5606	
Roland Miranda/City Attorney's Ofc.		310.253.5600	
Fiscal Impact: Yes ☒ No ☐		General Fund: Yes ☐ No ☒	
Public Hearing: ☐		Action Item: ☒ Attachments: ☒	
Public Notification: Master Notification List via email on January 18, 2007 Vic Peterson, Director of Operations, AboveNet Communications, Inc. by phone on January 17, 2007			
Department Approval: Charles Herbertson (01/17/2007)		City Attorney Approval: Carol Schwab (01/17/2007)	
City Controller Approval: Marlee Chang (01/18/07)		City Manager Approval: Jerry B. Fulwood (01/18/07)	
<u>RECOMMENDATION:</u> That the City Council adopt a Resolution approving the Encroachment Permit Agreement with AboveNet Communications, Inc. ("AboveNet"), authorize the Public Works Director to sign the Agreement on behalf of the City of Culver City, and authorize staff to enter into an agreement with AboveNet to install conduit for fiber optic communications for the new Fire Station #3 site. <u>BACKGROUND:</u> In 2000, in anticipation of increased demands for the installation of telecommunications facilities in the public rights-of-way, the City adopted an ordinance (Culver City Municipal Code, Ch. 11.20, "Telecommunications Regulatory Requirements") providing for City Council approval of any related encroachment permits. Telecommunications carriers, such as AboveNet, are subject to regulation by the California Public Utilities Commission and the Federal Communications Commission. The related federal and state laws require that cities allow the installation of the type of telecommunication facility proposed by AboveNet but allow cities to impose reasonable time, place and manner regulations and to receive compensation for encroachments into their rights-of-way.			

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On May 29, 2001, the City Council approved Encroachment Permit Agreements with Metromedia Fiber Network Services, Inc., Qwest Communications Corporation, and Level 3 Communications, LLC for the installation of a "pass through" telecommunication system. Since the approval of this permit, Metromedia Fiber Network Services has reorganized and is now known as AboveNet Communications, Inc. The original agreement allowed for the installation of approximately 2,000 linear feet of six duct bundles, of four conduits each, within Inglewood Boulevard and Centinela Avenue. For the most part, these conduits were installed by open trench. This work was successfully completed. The work currently being proposed in AboveNet's application will provide a secure high-bandwidth fiber optic transmission service to their customer located at 6025 Slauson Avenue.

DISCUSSION:

The work being proposed by AboveNet is to install four 1 ¼" conduits, with fiber optic, beginning at an existing AT&T manhole located on Centinela Avenue, approximately 100 feet west of Bristol Parkway. The alignment continues northerly on Bristol Parkway, 2 to 3 feet from the westerly curb, then to Slauson Avenue, 2 to 3 feet from the northerly curb, and then westerly on Slauson Avenue to the project's terminus at 6025 Slauson Avenue. This alignment covers approximately 4,976 linear feet. Along with the conduits, there will be six 4'x4'x4' shallow manholes that will be constructed within the sidewalk area along this route. Since the installation will be close to the curb line it is expected that there will be little interference with existing utilities. Therefore, most of this work is being planned as directional boring.

Since the proposed conduit installation will pass by the future site of Fire Station #3, staff has proposed that AboveNet install an extra conduit, for the purpose of providing a future connection to Fire Station # 3. AboveNet has agreed to install the extra conduit in return for a waiver of the customary encroachment permit fees. The fees that will be waived will be the costs of preparing the Encroachment Permit Agreement and construction permit, as well as the encroachment fees due for the first 3 years of this Agreement.

Staff has worked with AboveNet to draft an Encroachment Agreement that complies with Ch. 11.20 of the Municipal Code and provides for cost recovery. The agreement contains provisions that: 1) AboveNet will pay an annual \$12,440 encroachment fee to the City; 2) AboveNet will install a 3" conduit and five pull boxes to facilitate the telecommunications link to new Fire Station #3; 3) AboveNet will repair any damage it causes in constructing this project; 4) AboveNet assumes responsibility for all damages it may cause in operating their telecommunications facility; 5) AboveNet will maintain \$5,000,000 in coverage for automobile and general liability purposes; 6)

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AboveNet will indemnify and defend the City if the City is sued for any problems caused by AboveNet; and, 7) AboveNet's contractor will file a performance and completion bond prior to commencing construction on this project.

FISCAL ANALYSIS:

AboveNet's proposed project consists of installing 4,976 linear feet of conduit and six 4'x4'x4' shallow manholes between Centinela Avenue and the terminus at 6025 Slauson Avenue. Based on the agreed upon yearly encroachment fee rate of \$2.50 per linear foot, the City will be entitled to a yearly encroachment fee of \$12,440 for this project.

To assist the City in providing a future connection to Fire Station # 3, AboveNet has agreed to simultaneously install 1,340 linear feet of 3" conduit and five pull boxes between the Fire Station #3 site, at 6030 Bristol Parkway, and AboveNet's project terminus at 6025 Slauson Avenue. Assuming a construction cost of \$35.00 per linear foot of conduit and \$600 per pull box, this work will cost AboveNet \$49,900.

Per Chapter 9.08 of the Municipal Code and the City's adopted Rights-of-Way Management Plan, the City may recoup all costs associated with the issuance of all permits and agreements for the installation of telecommunications systems within the City's rights-of-way. The costs to the City of processing this Encroachment Permit Agreement (consisting of the time spent by the City Attorney's Office and the Public Works Department on processing this Agreement) is estimated to be \$17,400. Therefore, the net amount owed by the City to AboveNet for installation of the City's conduit will be \$32,500 (the difference between AboveNet's \$49,900 cost to construct the fiber optics conduit for Fire Station #3 and the City's permitting costs of \$17,400). During the first three years of this Agreement, AboveNet will owe the City \$37,320 (\$12,440/year x 3 years) in encroachment fees. AboveNet has proposed, and City staff is recommending (recognizing that these costs are lower than if the City were to contract on its own for installation of this fiber optics conduit for Fire Station #3), that the City agree to waive the encroachment fees due it during the first three years of this Agreement in lieu of the \$32,500 which the City will otherwise owe to AboveNet for the installation of the connection to Fire Station #3. Since there would be no cash payments to AboveNet under this proposal, this would be a favorable agreement for the City to consider.

Installation of this reach of fiber optic conduit to the proposed Fire Station #3 site would account for more than half of the required conduit needed to provide the necessary communication link to Fire Station #3. The final conduit connection would be at the intersection of Hannum Avenue and Playa Avenue.

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ATTACHMENTS:

- Encroachment Permit Agreement
- Resolution
- Vicinity Map

MOTIONS:

1. That the City Council adopt the Resolution approving the Encroachment Permit Agreement with AboveNet Communications, Inc. (and including an agreement for installation of conduit to Fire Station #3) and authorize the Public Works Director to sign the Agreement on behalf of the City of Culver City.