



# CITY OF CARSON

## Legislation Text

File #: 2018-477, Version: 1

### Report to Mayor and City Council

Tuesday, July 17, 2018

Consent

#### **SUBJECT:**

**APPROVAL OF CONTRACT AGREEMENT WITH SPECTRUM FOR LOCAL, LONG DISTANCE, INTERNET AND POINT-TO-POINT DATA CIRCUIT SERVICES FOR THE CITY OF CARSON (CITY COUNCIL)**

#### **I. SUMMARY**

At the December 19, 2017 meeting, City Council approved the award of purchase contract from a RFP process to Spectrum for local, long distance, internet and point-to-point data circuit services subject to a contract. After the execution of the contract, Charter Communication (Spectrum) realized that the taxes & fees are under-estimated. Since the cost of taxes and fees exceed the amount that the City Manager may approve, the City Council is being asked to approve the amendment of service contract.

#### **II. RECOMMENDATION**

1. APPROVE a three year contract for a contract sum \$260,899 per year, not to exceed a total contract sum of \$782,697, for Long Distance phone service, Internet Services and Point-To-Point Data Circuits services.

#### **III. ALTERNATIVES**

1. TAKE whatever action the City Council deems appropriate.

#### **IV. BACKGROUND**

This contract is coming back to the Council for consideration as the contract sum now includes charges for local and long distance fees for approximately \$3,850 per month for all City facilities. The local and long distance fees were not included in the previous staff report, as well as other fees and taxes that are charged by the state and federal governments for these types of services, and which are passed on to the City. These charges were not reflected in the agreement reviewed by the City Council, but turned out to be significant enough that further approval is required. The taxes, fees, and charges, are

estimated to add approximately 12% to the contract sum. These charges could be slightly less or slightly more. Taxes and fees would apply to the contract with any provider of such services, and they are calculated based on the amount of the monthly charges. It will take approximately 6 - 9 to get all the City facilities moved over to Spectrum and up and running. Our main priority will be the internet circuits.

The substantive changes requested by Spectrum are the following, with the changes to the termination and liquidated damages provisions being the most significant.

Termination. The City's boilerplate gives the City the option to terminate the agreement with notice for any reason. Spectrum requests that the City be allowed to terminate specific services only in the event of Chronic Level 1 Outages, as defined in the Service Level Agreements included as Exhibits "A-4", "A-5", and "A-6". Specifically, termination would relate to the particular service experiencing the outage, and Spectrum would adjust the monthly rate accordingly. (Likewise, if the any of the services provided is interrupted, Spectrum will provide a credit to the City for the time the service was not available. Any minor outages will result in service charge credits by Spectrum.)

Liquidated damages. In a related issue, Spectrum has stated that they will be making a significant infrastructure investment to bring the proposed Services to the City. In order for this investment to be worth entering into the Agreement, Spectrum needs to be sure that the City will abide by the full term of the Agreement, i.e., 36 months. Therefore, for any termination for convenience, Spectrum has included liquidated damages in the amount of the remaining Contract Sum.

Indemnification. The indemnification provisions only relate to indemnifying and holding the City harmless, but do not include defense of the City. The scope of the indemnification has been defined more specifically than it is in our boilerplate language. Indemnification would cover "Claims [that] arise directly from: (i) physical damage to personal or real property or bodily injury, including death, directly caused by the negligent or willful misconduct of Consultant, its employees or contractors, at the site(s) as a direct result from Consultant's installation, removal or maintenance at City's Service Locations of the Consultant Equipment; and/or (ii) Consultant's failure to comply with laws expressly applicable to Consultant's provision of Services ordered by and provided to City."

Disputes. Default provisions have been amended to be mutual. Invoicing disputes would be handled in accordance with Spectrum's procedures, as indicated in Exhibit "B-1", Section 5. City has 45 days to pay the monthly invoice, and delays will incur late fees of 1.5% of the monthly recurring charge (i.e., not including taxes etc.) per month. If service is suspended because of non-payment, additional charges may be incurred (e.g., reconnection fees). City has 90 days to dispute a charge. Finally, if Spectrum must resort to collections, fees and charges related to these services will be passed on to the City.

Schedule of performance. Spectrum anticipates completing all the construction within 180 days. However, based on experience, they know that there are many reasons beyond their control that might delay them. The effective date of the Agreement will be when construction is completed and Spectrum begins providing the Services. (In other words, payments will no begin until the Services are provided.)

Venue. Spectrum has requested in the event of a dispute, that venue be outside of Los Angeles County because of what they believe is inherent bias. The City Attorney's Office suggests Orange County if this change is accepted, as venue outside of Los Angeles County could be hours away.

Consultant's Right to Suspend. Spectrum requests the ability to suspend services in the event something the City is doing is damaging their equipment and circuits.

## **V. FISCAL IMPACT**

The Information Technology Division has budgeted \$189,800 this fiscal year to cover the costs of the Local, Long Distance phone service, Internet Services in the City Manager/Information Technology Division account no. 101-50-520-101-6011. Information Technology will need to budget for the next two fiscal years to include any new charges, taxes and fees.

## **VI. EXHIBITS**

1. Spectrum Contract Services Amendment No. 1. (pgs. 4 - 10)

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