



(Board Copy)
 Washington Metropolitan Area Transit Authority
**METRO ELECTRONIC ACTION
 DOCUMENT**

IDENTIFICATION			
MEAD ID:	99379	ACTION:	N/A
AWARD VALUE:	(Not yet awarded)	CONTRACT: (Proposed)	
FUND SOURCES: (View)		CONTRACTOR:	
LAST MODIFIED:	05/19/2006		

DESCRIPTION	
SUBJECT:	License Agreement with FiberGate, Inc. (FiberGate) for Fiber Optic System
PURPOSE:	To obtain Board approval for the General Manager to 1) negotiate and execute a non-exclusive License Agreement with FiberGate, Inc. (FiberGate) for installation and operation of a fiber optic cable system within the Metrorail system; 2) as part of the Agreement, for WMATA to indemnify FiberGate for WMATA's gross negligence or willful and/or wanton misconduct; and 3) to negotiate and execute a three-party agreement with FiberGate and Arbros for the sale of two existing fiber optic cables within the Metrorail system.

ORIGINATION					
INITIATOR			DEPARTMENTAL APPROVAL		
MARK MEISTER on 03/16/2006			Approved by SALPEAS , PANAGIOTIS 05/25/2006		
PHONE:	202-962-1589	OFFICE:	LAND	DEPT:	Secretary and Chief of St

COORDINATION (ROUTING)		
OFFICE	NAME	ACTION/DATE
LAND (7310)	MALASKY, GARY	Approved 05/13/2006
IRPG (4710)	COUCH, DAVID	Approved 05/15/2006
(8110)	THOMAS, EDWARD	Approved 05/14/2006
PDEC (4110)	SALPEAS, PANAGIOTIS	Approved 05/25/2006
COUN (1410)	O'KEEFFE, CAROL	Approved 06/02/2006
(1120)	Moneme, Emeka	Approved 06/06/2006

FINAL APPROVALS	
OFFICE	NAME/ACTION
PLN_DEV_CMTE	Approved for PDEC by PANAGIOTIS SALPEAS on 05/25/2006
BEMR	Approved for by Emeka Moneme on 06/06/2006
BEMR	Emeka Moneme (Not Yet Approved)
GM	Approved for GMGR by GMGR CEO on 06/07/2006
GM	GMGR CEO (Not Yet Approved)
BOARD	BOARD WMATA (Not Yet Approved)



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NARRATIVE

DISCUSSION:

FiberGate wishes to purchase the fiber optic system installed by Arbros. Arbros ceased operations and stopped paying License fees to WMATA in 2001.

This is a proposed non-exclusive agreement with FiberGate to maintain the current cable installation and for future placement of fiber optic cable within the Metrorail system. FiberGate provides high bandwidth, fiber-optic communications infrastructure in the Washington, DC area. The company provides its infrastructure to corporate and government customers requiring secure communications networks for high-speed data communications.

A summary of the terms proposed to be negotiated in the Agreement follows:

- 1) Agreement by WMATA to FiberGate`s purchase from Arbros of two (2) existing cable segments between Pentagon City and L`Enfant Plaza and Rosslyn and Foggy Bottom Metrorail stations. WMATA will receive 36 fibers from each of these cables as well as a lump-sum cash payment. Fibergate will pay for all costs, including materials and labor, associated with the break-out of the 36 fibers and connection to the splice boxes in WMATA`s communications rooms. WMATA will provide escorts at no charge.
- 2) For any new cable installations, FiberGate will give WMATA twelve (12) dark (unused) fibers within the FiberGate System for its use. Such use includes the right for WMATA to lease or license those fibers to third parties. WMATA has previously received cable from Arbros as part of the compensation of the two installed cable segments.
- 3) The initial term of the Agreement is ten (10) years with automatic renewal for an additional ten (10) year term. Annual rental is shown on the attached Confidential Attachment. The rental will be adjusted for any additional cable installed and will be adjusted yearly based on the increase in the Consumer Price Index.
- 4) Upon termination of the Agreement, all cable and associated equipment shall, at the option of WMATA, become the property of WMATA or be removed within six (6) months at the written direction of WMATA.
- 5) FiberGate is solely responsible for all costs associated with building and maintaining the FiberGate System, including the cost for WMATA staff time in design, review, coordination, engineering, inspection, administration, escort service and any other activities in connection with the Agreement.

6) FiberGate will indemnify WMATA and provide all required insurance coverages. WMATA agrees to indemnify FiberGate only for WMATA's gross negligence or willful and/or wanton misconduct. Additionally, the Agreement provides that no claims for indemnification can be made by either party unless the aggregate amount of the claim exceeds \$5,000.

7) WMATA will consent to the Arbros sale of its existing two fiber optic cables to FiberGate. WMATA and Arbros will settle all outstanding issues.

ALTERNATIVE:

Do not enter into the Agreement with FiberGate, Inc. WMATA would forego significant revenue from the lease of its right-of-way and the sale of its interest, if any, of the existing two fiber optic cables within the Metrorail system.

IMPACT ON FUNDING: See Confidential Memorandum

RECOMMENDATION:

That the Board authorize the General Manager to 1) negotiate and execute a non-exclusive License Agreement with FiberGate, Inc. for the installation and operation of a fiber optic cable system within the Metrorail system; 2) as part of the Agreement, for WMATA to indemnify FiberGate for WMATA's gross negligence or willful and/or wanton misconduct; and 3) to negotiate and execute a three-party agreement with FiberGate and Arbros for sale of the two existing fiber cables within the Metrorail system.

Attachment