

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CANDACE L. BYRD

Dept.'s Legislative Liaison: Perceta Alexander

Contact Number: 404-330-6569

Originating Department: Office of Enterprise Assets Management

Committee(s) of Purview: City Utilities

Chief of Staff Deadline: September 5, 2014

Anticipated Committee Meeting Date(s): September 30, 2014 (1<sup>st</sup> Read) & October 1, 2014 (2<sup>nd</sup> Read)

Anticipated Full Council Date: October 6, 2014

Legislative Counsel's Signature: \_\_\_\_\_

Commissioner's Signature: \_\_\_\_\_

Chief Financial Officer: \_\_\_\_\_

Chief Information Officer Signature (for IT Procurements) \_\_\_\_\_

Chief Procurement Officer Signature: \_\_\_\_\_

**CAPTION**

AN ORDINANCE AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE DOCUMENTS THAT WOULD GRANT AN UTILITY EASEMENT TO ZAYO GROUP, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND CBeyond COMMUNICATIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR A FEE OF THREE THOUSAND DOLLARS (\$3,000.00) ON AND ACROSS A PORTION OF PROPERTY OWNED BY THE CITY OF ATLANTA, LOCATED IN LAND LOT 85 OF THE 14<sup>TH</sup> LAND DISTRICT OF FULTON COUNTY, GEORGIA WITH AN ADDRESS OF 477 WINDSOR STREET, S.W., ATLANTA, GEORGIA, TO CONSTRUCT, OPERATE, MAINTAIN, REPAIR AND REPLACE NEEDED CONDUITS AND ANY OTHER NEEDED FACILITIES TO PROVIDE COMMUNICATION SERVICES; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)

Mayor's Staff Only

Received by CPO: \_\_\_\_\_ (date)

Received by LC from CPO: \_\_\_\_\_ (date)

Received by Mayor's Office: Janice Owe 9/5/14 (date)

Reviewed by: \_\_\_\_\_ (date)

Submitted to Council: \_\_\_\_\_ (date)

**AN ORDINANCE BY  
CITY UTILITIES COMMITTEE**

**AN ORDINANCE AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE DOCUMENTS THAT WOULD GRANT AN UTILITY EASEMENT TO ZAYO GROUP, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND CBEYOND COMMUNICATIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR A FEE OF THREE THOUSAND DOLLARS (\$3,000.00) ON AND ACROSS A PORTION OF PROPERTY OWNED BY THE CITY OF ATLANTA, LOCATED IN LAND LOT 85 OF THE 14<sup>TH</sup> LAND DISTRICT OF FULTON COUNTY, GEORGIA WITH AN ADDRESS OF 477 WINDSOR STREET, S.W., ATLANTA, GEORGIA, TO CONSTRUCT, OPERATE, MAINTAIN, REPAIR AND REPLACE NEEDED CONDUITS AND ANY OTHER NEEDED FACILITIES TO PROVIDE COMMUNICATION SERVICES; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta (“Grantor”) owns and operates the Dunbar Neighborhood Center, located at 477 Windsor Street, S.W.; and

**WHEREAS**, Zayo Group, LLC, a Delaware limited liability company and Cbeyond Communications, LLC, a Delaware limited liability company (collectively “Grantee”) provide communications services to Grantor, tenants, residents, licensees, customers or users located at 477 Windsor Street, S.W.; and

**WHEREAS**, Grantee, in an attempt to upgrade communication facilities, seeks a utility easement and the Grantor desires to grant a utility easement for the purpose of installing conduits, cables and related equipment for communication facilities at Grantor’s site located at 477 Windsor Street, S.W.; and

**WHEREAS**, Grantee shall construct, operate, maintain, repair and replace needed conduits and any other needed facilities as described in Exhibit B of the attached utility easement agreement; and

**WHEREAS**, Grantee shall pay Grantor the amount of Three Thousand Dollars (\$3,000.00) for the utility easement; and

**WHEREAS**, in order to provide communication services to Grantor, tenants, residents, licensees, customers or users located at 477 Windsor Street, S.W., Grantee must acquire a utility easement to construct, operate, maintain, repair and replace needed conduits and any other needed facilities on and across said property.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA**, as follows:

**SECTION 1:** That the Mayor or his designee, on behalf of the City, is authorized to execute any and all documents or legal instruments to grant a utility easement to Zayo Group, LLC, A Delaware Limited Liability Company and Cbeyond Communications, LLC., a Delaware Limited Liability Company for the area shown on Exhibit B of the attached utility easement agreement.

**SECTION 2:** That Grantor is authorized to accept from Grantee the fee of Three Thousand Dollars (\$3,000.00) in exchange for the utility easement; Fifty percent (50%) to be deposited into 1001 (General Fund), 040408 (Exe Facility Maintenance -Dunbar), 3810008 (Buildings, Rental), 1565000 (Gen. Gov-Bldgs and Plant) and Fifty percent (50%) to be deposited into 7701 (Trust Fund), 040408 (Exe Facility Maintenance – Dunbar), (Buildings, Rental), 1565000 (Gen. Gov-Bldgs and Plant), 60024(Dunbar Neighborhood Center), 69999 (Funding Source for Non-Capital).

**SECTION 3:** That the City Attorney is authorized to prepare all necessary agreements and that the City shall incur no liability under such agreements until the agreements have been executed by the Mayor or his designee, attested to by the Municipal Clerk, and approved as to form by the City Attorney and delivered to the appropriates parties.

**SECTION 4:** That all ordinances and parts of ordinances in conflict herewith are hereby repealed for purposes of this ordinance only, and only to the extent of the conflict.

**Part II: Legislative White Paper:** (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption:

**AN ORDINANCE AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE DOCUMENTS THAT WOULD GRANT AN UTILITY EASEMENT TO ZAYO GROUP, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND CBEYOND COMMUNICATIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY FOR A FEE OF THREE THOUSAND DOLLARS (\$3,000.00) ON AND ACROSS A PORTION OF PROPERTY OWNED BY THE CITY OF ATLANTA, LOCATED IN LAND LOT 85 OF THE 14<sup>TH</sup> LAND DISTRICT OF FULTON COUNTY, GEORGIA WITH AN ADDRESS OF 477 WINDSOR STREET, S.W., ATLANTA, GEORGIA, TO CONSTRUCT, OPERATE, MAINTAIN, REPAIR AND REPLACE NEEDED CONDUITS AND ANY OTHER NEEDED FACILITIES TO PROVIDE COMMUNICATION SERVICES; AND FOR OTHER PURPOSES.**

Council Meeting Date: September 30, 2014 (1<sup>st</sup> Read) & October 1, 2014 (2<sup>nd</sup> Read)

Requesting Dept.: Office of Enterprise Assets Management

**B. To be completed by the department:**

**1. Please provide a summary of the purpose of this legislation?** The purpose of this Ordinance is to authorize the Mayor or his designee to execute documents that would grant an utility easement to Zayo Group, LLC, a Delaware Limited Liability Company and Cbeyond Communications, LLC, a Delaware limited liability for a fee of Three Thousand Dollars (\$3,000.00) on and across a portion of property owned by the City of Atlanta, located in Land Lot 85 of the 14<sup>th</sup> Land District of Fulton County, Georgia with an address of 477 Windsor Street, S.W., Atlanta, Georgia. The utility easement shall be used to construct, operate, maintain, repair and replace needed conduits and any other needed facilities to provide communication services.

**2. Please provide background information regarding this legislation.**

The Zayo Group, LLC, a Delaware limited liability company and Cbeyond Communications, LLC, a Delaware limited liability company has requested an utility easement to install and maintain conduit, cables and related equipment for communications facilities located at 477 Windsor Street, S. W., Atlanta, Georgia (Dunbar Neighborhood Center). The Dunbar Neighborhood Center houses various tenants offering services to the surrounding community. Two of the tenants, The Annie Casey Foundation and the Center for Working Families have their internet and telephone service through these companies. The installation and maintenance of the fiber facilities will be at no costs to the City of Atlanta.

**3. If Applicable/Known:**

- (a) **Contract Type:** Utility Easement
- (b) **Source Selection:** N/A
- (c) **Bids/Proposals Due:** N/A
- (d) **Invitations Issued:** N/A
- (e) **Number of Bids:** N/A
- (f) **Proposals Received:** N/A
- (g) **Bidders/Proponents:** N/A
- (h) **Term of Contract:** One (1) term of five (5) years

**4. Fund Account Center:** Fifty percent (50%) to be deposited into 1001 (General Fund), 040408 (Exe Facility Maintenance -Dunbar), 3810008 (Buildings, Rental), 1565000 (Gen. Gov-Bldgs and Plant);

and

Fifty percent (50%) to be deposited into 7701 (Trust Fund), 040408 (Exe Facility Maintenance – Dunbar), (Buildings, Rental), 1565000 (Gen. Gov-Bldgs and Plant), 60024(Dunbar Neighborhood Center), 69999 (Funding Source for Non- Capital).

**5. Source of Funds:** The revenues received for the utility easement will be from the Zayo Group, LLC, a Delaware Limited Liability Company and Cbeyond Communications, LLC, a Delaware limited

**6. Fiscal Impact:** The fiscal impact will be \$1,500 to the General Fund and \$1,500 to the Trust Fund for the Dunbar Neighborhood Center.

**7. Method of Cost Recovery:** N/A

**This Legislative Request Form Was Prepared By:** Cheryl Glenn-Snooks, Commercial Leasing and Property Manager, 404-330-6849.

**STATE OF GEORGIA**  
**COUNTY OF FULTON**

**UTILITY EASEMENT**

FOR AND IN CONSIDERATION OF one-time amount of \$3,000.00 and other valuable consideration as specified in an Access and Utility Agreement, the receipt of which is hereby acknowledged, The City of Atlanta, a municipal corporation of the State of Georgia (“Grantor”) of 55 Trinity Avenue, S.W. (address), City of Atlanta, County of Fulton, State of Georgia, 30303, grants, conveys and warrants to Zayo Group, LLC, a Delaware limited liability company, and Cbeyond, LLC, a Delaware limited liability company, (“Grantee”) for the purposes set forth herein, an Utility Easement (“Easement”) under, across and over the following real property (“Property”) located at 477 Windsor Street SW, Atlanta, GA 30312, in Fulton County, Georgia, as described and incorporated by this reference in the attached Exhibit A. Except as maybe otherwise set forth herein, Grantee’s rights shall be exercised upon that portion of the Property (“Easement”) as described and incorporated by this reference in the attached Exhibit B.

1. Purpose. Grantee shall have the right to construct, operate, maintain, repair and replace needed conduits and any other needed facilities as described in Exhibit B.
2. Access. Grantee shall have the right to access to the Easement over and across the Property to enable Grantee to exercise its rights hereunder and shall have access on or through the Property to the Fiber Facilities during normal business hours as follows: Monday through Friday 8:15 am to 9:00 pm and Saturday 9:30 am to 6:00 pm. Grantee shall compensate Grantor for any damage to the Property caused by the exercise of the right of access.
3. Obstructions. Grantee may from time to time remove tress, bushes or other obstructions within the Easement to the extent reasonably necessary to carry out the purposes set forth herein provided that the prior consent for any material landscaping changes or removal will be obtained from Grantor which consent shall not be unreasonably withheld, delayed or conditioned.
4. Grantor’s Use of Easement. Grantor reserves the right to use the Easement for any purpose not inconsistent with the rights herein granted to Grantee, provided that Grantor shall not construct or maintain any building or other structure on the Easement which would interfere with the exercise of the rights herein granted. Grantor shall not dig, tunnel or use any other form, of construction activity on the Property, which would disturb Grantee’s rights.

Site Name:  
Site Number:  
Market:

5. Indemnity. By accepting and recording this Easement, Grantee agrees to indemnify and hold harmless Grantor from any and all claims for injuries and/or damages suffered by any person which may be caused by the Grantee's exercise of the rights granted herein provided that Grantee shall not be responsible for any claims arising from the negligence or intentional conduct of Grantor, its employees, its agents or independent contractors.
6. Environmental Laws. Grantor cannot indemnify Grantee and hold it r harmless from and against any and all claims and liability that the Grantee may suffer due to the exercise of any Hazardous Substance as defined in any applicable federal, state or local law or regulation, on the Property or released from the Property into the environment, that relate to or arise from the indemnitor during or prior to the commencement of the Easement.
7. Termination. The rights granted herein shall begin at such time as Grantee's Agreement regarding 477 Windsor Street SW, Atlanta, GA 30312, as specified in a "Right of Entry and Use Agreement", expires or is terminated. The "Right of Entry and Use Agreement" is intended to cover only the time surrounding the construction of the proposed equipment within the "Easement". Grantor shall also have the right to terminate this Easement at any time, upon thirty (30) days prior written notice to Grantee.
8. Title, Successors and Assigns. Grantor states to Grantee that Grantor has full right, power and authority to execute this Easement. This Easement shall run with the Property and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representative, assigns, and sublessees of the Premises.

SIGNATURES ON FOLLOWING PAGE

Site Name:  
Site Number:  
Market:

IN WITNESS WHEREOF, the parties have executed this Access and Utility Easement as of the following day and year.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Grantor:

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Grantee:

Zayo Group, LLC  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESS:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

WITNESS:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Grantee:

Cbeyond, LLC  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

WITNESS:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Site Name:  
Site Number:  
Market:



**EXHIBIT A**  
**Legal Description**

**PIN 14-008500100478**

**SW QUADRANT OF INTERSECTION OF FULTON ST SW AND WINDSOR ST, SW  
DUNBAR NEIGHBORHOOD CENTER  
477 WINDSOR STREET SW, ATLANTA GA 30312**

Site Name:  
Site Number:  
Market:

**EXHIBIT B**  
**Easement Location within the Property**

**See attached:**

**CONSTRUCTION DRAWINGS**

Site Name:  
Site Number:  
Market:

**EXHIBIT C**

**See attached:**

**“Right of Entry and Use Agreement”**

Site Name:  
Site Number:  
Market: