

RESOLUTION NO. 7097

A RESOLUTION OF THE CITY OF LAWRENCE, KANSAS, ESTABLISHING CERTAIN POLICIES RELATING TO THE CITY'S ADMINISTRATION OF ITS FIBER OPTIC CABLE NETWORK, INCLUDING THE INSTALLATION OF FIBER INFRASTRUCTURE AND FIBER OPTIC CABLE, COOPERATION WITH COMMUNITY ANCHOR INSTITUTIONS, LEASING SURPLUS DARK FIBER TO THE PRIVATE SECTOR, AND ESTABLISHING A LIST OF CITY-APPROVED VENDORS.

WHEREAS, the City of Lawrence, Kansas, owns a fiber optic cable network that it uses to provide for its telecommunications needs and to enhance the services it offers to its residents;

WHEREAS, in order to maximize efficiency within that fiber optic cable network, the City is committed to establishing a fiber optic ring and redundancies within that ring;

WHEREAS, the installation of fiber infrastructure and fiber optic cable is most cost effective when it is completed in conjunction with street, utility, and other public infrastructure projects;

WHEREAS, the Governing Body finds that it is in the best interest of the City and the general public to establish certain policies regarding the installation of fiber infrastructure and fiber optic cable in conjunction with certain street, utility, and other public infrastructure projects;

WHEREAS, it is cost effective for the City -- in that it avoids unnecessary and costly duplication of efforts -- to cooperate with Community Anchor Institutions in the installation and use of fiber infrastructure and fiber optic cable;

WHEREAS, the Governing Body finds that it is in the best interest of the City and the general public to establish certain policies regarding cooperation with Community Anchor Institutions for the installation and use of fiber infrastructure and fiber optic cable;

WHEREAS, because it is cost-effective, the City customarily installs the maximum feasible amount of fiber optic cable within its fiber infrastructure and, as a result, has surplus dark fiber within its fiber optic cable network;

WHEREAS, the Governing Body has heard from businesses and residents of the City complaining that there exist barriers limiting access to high-speed fiber-based internet services and a professional consultant, hired to examine the issue, has confirmed those complaints; and

WHEREAS, in order to eliminate barriers limiting access to high-speed fiber-based internet services within the City and in order to enhance those internet services available to businesses and residents of the City, the Governing Body finds that it is in the best interest of the City and the general public to establish certain policies permitting the City, in certain circumstances, to lease surplus dark fiber within its fiber optic network, on a competitively-neutral basis, to the private sector.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

SECTION 1. DEFINITIONS. The following words, terms, and phrases, when used in this Resolution, shall have the following meanings:

- (a) **"Community Anchor Institutions"** shall include, but not be limited to entities such as schools, institutions of higher education, libraries, hospitals and medical providers, public safety providers, and other community support organizations and agencies.
- (b) **"Dark Fiber"** shall mean any fiber optic cable not in current use.
- (c) **"Fiber Infrastructure"** shall mean City-owned conduits, inner-ducts, vaults, and other facilities through which the City may use, maintain, and repair its fiber optic cable network.
- (d) **"Surplus Dark Fiber"** shall mean any City-owned fiber optic cable within its fiber optic cable network that is not currently in use by the City and which the City has not reserved for future use.
- (e) **"Surplus Dark Fiber Map"** shall mean that map, maintained by the City Clerk, made available to the general public for inspection, and updated from time to time, illustrating the City's official inventory of Surplus Dark Fibers.
- (f) **"Symmetrical"** shall mean, in the context of internet service, equal speeds for uploading and downloading data/content from the internet.
- (g) **"Vault"** shall mean any access point (e.g., pull box, hand hole, manhole, etc.) within the City's Fiber Infrastructure from which the City can conventionally perform work to maintain and repair its fiber optic cable network.

SECTION 2. INSTALLATION OF FIBER INFRASTRUCTURE AND FIBER OPTIC CABLE.

- (a) **Policy.** It is the express policy of the City, when in the course of planning or designing street, utility, or other public infrastructure projects to be located in the City's rights of way, whenever such project is planned along arterial or collector streets or when it otherwise meets the objectives of the City's technology master plan, to consider the potential for installing Fiber Infrastructure and fiber optic cable in conjunction with that project.
- (b) **Inter-department Cooperation.** When planning or designing street, utility, or other public infrastructure projects that meet the criteria identified in subsection (a), *supra*, the City department charged with planning or designing the street, utility, or other public infrastructure project shall consult and cooperate with the City's Information Technology Department regarding the City's Fiber Infrastructure and fiber optic cable needs.
- (c) **Fiber Infrastructure Standards.** Conduit installed by the City shall be an appropriate size to meet the needs of the application. Vaults shall be adequately spaced along the Fiber Infrastructure route to permit access by the City or third parties.

SECTION 3. COOPERATION WITH COMMUNITY ANCHOR INSTITUTIONS.

- (a) **Policy.** It is the express policy of the City to cooperate with Community Anchor Institutions, when feasible, in order to optimize opportunities to install and to use Fiber Infrastructure and fiber optic cables within the City for the benefit of the general public.
- (b) **Authorization.** The City Manager shall submit to the Governing Body for approval any proposed agreement between the City and any Community Anchor Institution relating to the installation or use of Fiber Infrastructure or fiber optic cables.

SECTION 4. LEASING SURPLUS DARK FIBER TO THE PRIVATE SECTOR.

- (a) **Policy.** It is the express policy of the City, in order to enhance internet services available to businesses and residents of the City, to provide opportunities for private entities to lease from the City, on a competitively neutral basis, Surplus Dark Fiber.
- (b) **Authorization.** The City Manager shall submit to the Governing Body for approval any proposed lease agreement between the City and any private entity relating to the use of the City's Surplus Dark Fiber.
- (c) **Restrictions.** Any agreement between the City and a private entity for the use of the City's Surplus Dark Fiber shall be subject to the following restrictions:
 - (i) Any Surplus Dark Fiber leased by the City to private entities in accordance with this policy shall remain, at all times, the sole and exclusive property of the City.
 - (ii) Under this Policy, only Dark Fiber marked on the Surplus Dark Fiber Map shall be subject to lease to private entities. The Surplus Dark Fiber Map shall be maintained in the City Clerk's Office, shall be made available to the public for inspection, and shall be updated from time to time to reflect changes in the City's fiber optic network.
 - (iii) The standard lease agreement under this policy will be five (5) years and will offer two (2) additional five-year option terms.
 - (iv) Any private entity leasing Surplus Dark Fiber from the City shall agree to use the Surplus Dark Fiber to provide to businesses and residents of the City Symmetrical high-speed fiber-based internet service with a minimum capacity of 100 megabits per second. Failure to use the Surplus Dark Fiber leased from the City within one year of the date of any Lease Agreement shall be a default of that Agreement and shall be grounds for termination of the Lease Agreement.
 - (v) Connections to the City's Fiber Infrastructure by a private entity under this policy shall occur only at established Vaults, as approved in writing by the City, and under no circumstance shall a private entity have access to the City's fiber optic cables.

- (vi) Surplus Dark Fiber leased under this Policy shall be leased in full segments between demarcation points, as determined by the City and agreed upon by the parties.
- (vii) In order to ensure the continuity of City services and the health, safety, and welfare of the general public, only the City or a City-approved vendor shall have access to and perform work on the City's Fiber Infrastructure or its fiber optic cable network.
- (d) **Annual Fee.** The City shall recover the costs of leasing its Surplus Dark Fiber to private entities under this policy by charging, in the form of rent, an annual fee. The annual fee shall be \$62.50 per strand of Dark Fiber, per mile, with a minimum annual fee of \$62.50. The full length of each leased Dark Fiber strand segment -- regardless of how much is actually used by the private entity -- shall be used to calculate the annual fee.
- (e) **Incentive.** As an incentive for private entities to offer high speed internet services to businesses and residents of the City, the City will waive the Annual Fee for the first five (5) years of the Lease Agreement if the private entity performs each of the following:
 - (i) The private entity provides and sustains service to at least three hundred (300) customers and achieves that level of service within twenty-four (24) months of signing the Lease Agreement with the City. Upon the attainment of that goal, the private entity shall submit an affidavit to the City certifying that it has met this goal and the City will rebate to the private entity any Annual Fee paid up to that point.
 - (ii) The private entity provides free high speed fiber-based internet service to those households within its service area, having a net income at or below 140% of the net income eligible for food assistance as defined and published by the Kansas Department for Children and Families.
 - (iii) The private entity provides free high-speed fiber-based internet service to not-for-profit organizations and institutions within its service area. Such free service does not have to be at the 100 megabits per second level.
- (f) **Standard Agreement.** The City's standard Lease Agreement, which is affixed hereto as Exhibit A, shall generally be used as a template for any Lease Agreement between the City and a private entity for use of the City's Surplus Dark Fiber.
- (g) **Reporting Requirements.** Private entities leasing Surplus Dark Fiber from the City shall be required to submit an annual report to the Governing Body no later than January 31st of each year, reporting on the benefits accruing to the community based on its activities under the Lease Agreement during the preceding calendar year. The report shall include, but not be limited to the following: the location and purpose of each Surplus Dark Fiber leased from the City; the extent to which the private entity improved businesses' and residents' access to high-speed, fiber-based internet services; and shall certify, by affidavit,

whether the third party has provided services to lower-income residents and not-for-profit organizations and institutions within its service area.

SECTION 5. CITY-APPROVED VENDORS.

- (a) **List of City-Approved Vendors.** No person shall have access to or perform work on the City's Fiber Infrastructure or its fiber optic cable network unless such person is a City-approved vendor and is included on the City's list of City-approved vendors.
- (b) **Application; Qualifications.** In order to be included on the City's list of City-approved vendors, a person must file with the Director of Public Works a written application that includes the applicant's name, address, telephone number, and e-mail address, if any. In order for the application to be approved, the applicant must submit, in conjunction with his or her application, the following:
 - (i) Proof that the applicant is a Certified Fiber Optic Technician, Level I and Level II;
 - (ii) A sworn statement that the applicant has no less than five (5) years' experience splicing fiber optic cable; and
 - (iii) No less than five (5) references, including names and contact information, for whom the applicant has performed and completed fiber optic cable work within the preceding five (5) years.
- (c) **Approval; Disapproval.** Within thirty (30) days of receipt of an application, the Director of Public Works, or his or her designee, shall review the application. If the application is complete and the applicant meets all qualifications for approval, then the application shall be approved and the applicant shall be included on the City's list of City-approved vendors. If the application is incomplete or the applicant does not meet all qualifications for approval, then the application shall be disapproved. The Director of Public Works, or his or her designee, shall send to the applicant Notice of Approval or Notice of Disapproval through the United States Postal Service.
- (d) **Retention on the List of City-Approved Vendors.** In order to be retained on the City's list of City-approved vendors, the applicant must maintain his or her certification as a Certified Fiber Optic Technician, Level I and Level II. Once each calendar year, the Director of Public Works, or his or her designee, shall review the City's List of City-approved vendors to ensure that all certificates are current. It shall be the obligation and responsibility of all City-approved Vendors to maintain the certification required by this policy and to transmit to the City proof of certification or recertification in a timely manner.
- (e) **Removal from the List of City-Approved Vendors.** The Director of Public Works, or his or her designee, shall remove from the City's List of City-approved Vendors, (i) any person whose certification as a Certified Fiber Optic Technician, Level I and Level II, has expired, lapsed, or been revoked, (ii) any person who violates any provision of this Fiber Policy, or (iii) any person whose work on the City's Fiber Infrastructure or its fiber optic cable network falls below the minimum standards of the profession.

- (f) **Appeal.** Any person aggrieved by a decision of the Director of Public Works, or his or her designee, shall have the right to file an appeal with the City Manager within fourteen (14) days of the date of the decision. Each Notice of Appeal shall be filed with the City Clerk, shall be in writing, and shall explain in detail why the decision of the Director of Public Works, or his or her designee, is erroneous. The City Manager may hear the appeal or may, at his or her discretion, appoint a panel of disinterested persons to hear the appeal. The appeal shall be heard as soon as may be practicable.

SECTION 6. FUND MANAGEMENT. Revenues generated from the lease of Surplus Dark Fiber shall be deposited in the City's General Fund. Expenditures associated with the lease of Surplus Dark Fiber, including but not limited to operational, maintenance, repair, capital, and administrative costs, may be paid by the City from the General Fund.

ADOPTED by the Governing Body of the City of Lawrence, Kansas, this ____ day of April, 2015.

APPROVED:

Jeremy Farmer
Mayor

ATTEST:

Diane Trybom
Acting City Clerk

APPROVED AS TO FORM AND LEGALITY:

Toni R. Wheeler
City Attorney