

COUNCIL COMMITTEE OF THE WHOLE
August 5, 2013

The Council Committee of the Whole met on Monday, August 5, 2013 at 6:00 p.m. in the Council Chambers. The meeting was called to order by Council President Dale Warman with the following members present: Mayor Ron Shaffer, Ashley Weaver, Ruth Hopkins, Steve Noll, Michael Kelly, Andrew Wang, Laura Wassmer, Brooke Morehead, David Morrison, Charles Clark and Ted Odell. Staff Members present: Wes Jordan, Chief of Police; Keith Bredehoeft, Interim Public Works Director; Katie Logan, City Attorney; Quinn Bennion, City Administrator; Dennis Enslinger, Assistant City Administrator; Lisa Santa Maria, Finance Director; Danielle Dunn, Assistant to the City Administrator; Nic Sanders, Human Resources Specialist and Joyce Hagen Mundy, City Clerk.

COU2013-24 Consideration of a network services and cooperation agreement and related agreements with Google Fiber Kansas, LLC

City Attorney Katie Logan reviewed the process which began last May for negotiations with Google Fiber through their attorney resulting in the three agreements that are being considered. She noted a fourth agreement addressing Right-of-Way Operation was initially proposed but dropped at Google's request as that is addressed by the City's code.

She noted Google sent what it called the final agreement in early June just before she left on vacation, when she reviewed it upon her return on June 17, it did not meet her approval. She received an email from the Google attorney on June 20th stating that Google would not build in Prairie Village if the agreements were not finalized by June 30. Throughout July city staff and Ms. Logan continued communications and received the version before the Council on July 18th. On July 31, Mrs. Logan noticed a provision was included which Google had previously agreed to delete and asked for that correction to be made. The error was caused by Mrs. Logan, not Google. She received an email response from Google's in house attorney that Google would withdraw the draft agreements and remove Prairie Village from its expansion plans if Mrs. Logan did not confirm that the July 18 versions of the Agreements, without change, would be presented to the governing body.

Mrs. Logan noted the agreements were drafted by Google's legal team and few concessions were made by Google during the process. Key negotiating points included the following:

- Tree Trimming - The initial agreement required the City to perform mandatory tree trimming to maintain the structures on which Google equipment would be located. Google agreed to amended language that obligated the City to provide tree trimming at the City's discretion and within City maintenance requirements limiting the City's responsibility.
- Confidentiality Terms. - The confidentiality terms were clarified with the addition of language "to the extent permitted by law".

- Rent Terms - The City asked that rent, when Google was not providing free broadband and wifi services, be determined by the City - This was amended to be mutually agreed upon by both parties and if not that it be resolved by arbitration.
- Breach of Confidentiality or Liability - punitive damages qualifier was added "subject to the Kansas Tort Claims Act" and preserving immunities from punitive damages under Kansas law.
- Google will not pay for electricity used by its wifi equipment if attached to City owned structures. Mrs. Logan noted she had concerns with this as it establishing a precedent with other providers. She was able to add the language "subject to the city's annual appropriations budget."
- Most Favored Nations Clause - If the City enters into an agreement with another provider that is more beneficial - those benefits will be provided to Google as well.
- Make Ready Work - Google will be responsible for make ready work - the language follows in the agreement with the city of Lee's Summit.
- Contractor Provision List - The City is to provide a list of five contractors to do the make ready work. This was the clause that was deleted from earlier versions but then included in the July 18 version.

The attached summary of agreements was given to the Council in their agenda packets in addition to the full contracts. Mrs. Logan stated the decision before the Council is to enter into the agreements as prepared or not enter into an agreement.

David Morrison asked if other cities pay for electricity. Mrs. Logan responded Google requires a confidentially agreement with cities in negotiation and she cannot confirm for cities still pending.

Charles Clark questioned if there was no service what electricity would be used. Mrs. Logan responded that she understands that electricity is required from Google WiFi equipment attached to structures such as light poles. She confirmed that electricity is required only if Google places such equipment on City structures. Dale Warman questioned how they would determine the amount of electricity being used. There is not an answer at this point.

Brooke Morehead asked what Mrs. Logan's professional recommendation. She replied the agreement as it stands is not without some risk. There are provisions that she would have taken out if she could. It is not perfect from the City's perspective. She noted there was a point during negotiations where she stated she would not sign the agreement as approved as to form as City Attorney, but that she would approve the existing agreement as to form.

Ted Odell asked if there are any cities that have not signed an agreement. Mrs. Logan stated she is unaware of any, but there are several still in negotiations with Google. Among those in Johnson County who have already signed are Olathe, Shawnee, Mission, Westwood and Westwood Hills.

Dale Warman stated, from what he has heard, city residents want this service but they do not understand all the implications. Laura Wassmer stated the frustrating part is there is no customer feedback on the service Google will be providing.

Mrs. Logan stated the City's negotiated agreement appears to be more favorable than the City of Olathe or Shawnee's agreement.

Michael Kelly noted this partnership will place Prairie Village on the cutting edge and he is more than willing to take the risk. Ted Odell agreed noting the large number of years Prairie Village residents have had no other options for service.

Mrs. Logan stated that all three agreements would need to be approved. The Network Cooperation and Services Agreement (NSA) is the overriding agreement that governs the others, which are a structure agreement and a license agreement.

Laura Wassmer asked if Google would be requiring a percentage of residents to sign-up before offering service. She stated it is important that the residents know the signing of these agreements does not commit Google to providing service, the timeframe of their coming is unknown and may be several years. Mrs. Logan responded that she did not have any information about the business terms Google would require from residents.

Katie Logan stated the ten year term of service starts from the date the agreement is signed, not when service is begun. The City tried to get the term to start at start of service, but was unsuccessful. The sign up process is not known.

Katie Logan noted the termination of the (NSA) does not terminate the structure or license agreement. The City can ask them to vacate and abandon the structure.

Ted Odell made the following motion, which was seconded by Brooke Morehead:

**RECOMMEND THE CITY COUNCIL APPROVE THE NETWORK
COOPERATION AND SERVICES AGREEMENT (NSA) BETWEEN
THE CITY OF PRAIRIE VILLAGE AND GOOGLE FIBER KANSAS, LLC
AND THE RELATED STRUCTURE ATTACHMENT AND CONDUIT
OCCUPANCY AGREEMENT AND LICENSE AGREEMENT.**

COUNCIL ACTION TAKEN

08/05/2013

Ruth Hopkins feels there will be new technology providers in the next few years. Mrs. Logan stated any future video service providers might have to be offered at least some of the same provisions found in these Agreements.

Quinn Bennion stated that staff is concerned that Google will use the same approach during the construction of the network. Also, residents need to be aware of the inconveniences and possible aesthetics of network buildout and utility boxes.

Ted Odell stated the residents need to have the option of competing service providers.

Ruth Hopkins noted her children live in areas with Google Service and are very unhappy with the cost of the services. She feels Prairie Village residents may be as well.

Steve Noll stated the agreement does not commit the expenditure of a large amount of cash by the City. If Google does not deliver the expected level of service, that is not the city's responsibility. Residents need competition for Time Warner services.

The motion to approve the agreements with Google was voted on and passed unanimously.

COU2013-25 Request for Contingency Funds for Contract Services - Weed and Grass Abatement

Dennis Enslinger reported that prior to 2009, the Public Works Department mowed properties found to be in violation of the City Weeds and Grass ordinance. Each year the Codes Department budgets for contract mowing services. In FY2013 a total of \$3,500 was budgeted for these services. As of July 31, 2013, the City has mowed 13 properties at a total cost of \$5,246. Several of the properties abated were of significant cost due to taller grass and the removal of tree limbs prior to mowing.

Mr. Enslinger noted the City places a lien on the property to recover costs related to weed and grass abatement; however, recovery of these funds can take years, often only occurring as a result of a sale. Therefore, staff is requesting an additional \$5,000 in contingency funds to cover the current and future overages from the FY2013 budget amount of \$3,500. He noted the Council has previously allocated \$32,000 in contingency funds.

Steve Noll asked if the City was likely to recover these funds. Mr. Enslinger replied the funds should be recovered, but it may take a long time.

Laura Wassmer confirmed the requested \$5000 was in addition to the budgeted funds. Michael Kelly made the following motion, which was seconded by Ruth Hopkins and passed unanimously:

MOVE THE CITY COUNCIL AUTHORIZE THE USE OF \$5,000
FROM THE CONTINGENCY FUND FOR CONTRACT SERVICES -
WEED AND GRASS ABATEMENT.

COUNCIL ACTION TAKEN
08/05/2013

COU2013-26 CONSIDER BID AWARD FOR HIGHWAY ROCK SALT

Keith Bredehoeft stated bids were opened on April 29, 2013 by the City Clerk. This is an annual bid for highway rock salt used for snow/ice control. Four bids were received:

Company	Rock Salt	Enhanced Salt
Central Salt	\$52.40 per ton	\$69.09 per ton
Cargill	\$55.90 per ton	\$76.43 per ton
Independent Salt	\$49.75 per ton	No Bid
North America Salt	\$90.06 per ton	No Bid

The bid price for 2012 was \$49.75 per ton for Rock Salt and \$73.24 per ton for Enhanced Salt.

It is anticipated that Rock Salt and Enhanced Salt will be purchased under this bid with the Enhanced Salt being the primary product purchased. Central Salt has the lowest bid price for the Enhanced Salt and therefore staff is recommending they be our supplier for this year. The 2013 Budget includes \$96,000 for salt.

The 2012 Salt Bid included the Enhanced Salt for the first time. The City used about 200 tons this past winter and feel it is a good product and it is effective at the rates specified by the manufacturer. In 2013, the department plans to almost exclusively use the Enhanced Salt.

Steve Noll asked if there were any special provisions required for the storing of the Enhanced Salt. Mr. Bredehoeft stated there were not. Laura Wassmer confirmed the enhanced salt was better for the environment.

Brooke Morehead recused herself from voting on this item due to a conflict of interest.

Michael Kelly made the following motion, which was seconded by Steve Noll and passed by a majority vote with Brooke Morehead abstaining.

MOVE THE CITY COUNCIL APPROVE THE BID FROM CENTRAL SALT FOR HIGHWAY ROCK SALT AT A COST OF \$52.40 PER TON DELIVERED AND ENHANCED SALT AT A COST OF \$69.09 PER TON DELIVERED.

**COUNCIL ACTION TAKEN
08/05/2013**

STAFF REPORTS

Public Safety

- Chief Jordan distributed the executive summary from the “In Defense of Our Schools” task force. The department will be participating in the implementation and administration of the recommendations, noting the school district has the largest responsibility for implementation.
- The City is continuing to have problems with the security door lock system. Staff is working on determining the best route to address the problems with this technology which has become outdated - i.e. repair or replacement.

- Information has been sent to each school regarding traffic flow and parking in anticipation of school starting next week.
- Enrollment for the Police Citizens' Academy is down. They want to have at least 10 individuals to hold the academy which begins in September.
- The Department did participate in a prostitute sting operation with the City of Leawood. This is done on an annual basis as a proactive measure to deter such activities in the city.

Public Works

- Keith Bredehoeft reported they hope to have 63rd Street open prior to the beginning of school next week. There will continue to be some work during the day.
- WaterOne is currently doing work on Somerset, the City will do its work when they are finished.
- The new Public Works sign and entry area honoring former Public Works Director Bob Pryzby have been completed.
- The city parks now have recycle bins in addition to trash bins.

Administration

- Dennis Enslinger reported the Planning Commission will meet tomorrow evening to consider the Mission Valley project. A tentative meeting date has been set for next week, if they are unable to finalize action. The requested Special Use Permit application will come before the Council on Tuesday, September 3rd. All Council members need to be in attendance and it was confirmed that all plan to be there on September 3rd.
- The Art Reception for the current exhibit will be on Friday from 6:30 to 7:30 p.m.
- Danielle Dulin reported pool attendance as of the end of July at 45,903 with \$101,762 collected in gate receipts.
- The pool will go on reduced hours next week with the beginning of school opening at 4:30 p.m. on weekdays with regular weekend hours.
- MARC is applying for grant money for Phase II of the Community AGenda work With the First Suburbs Coalition and KC Communities for All Ages to develop strategies to implement the ideas from the tool kit created in Phase 1
- Lisa Santa Maria distributed the 2nd Quarter Financial Report. The City has received 52.5% of anticipated revenue and spent 34.5% of budgeted expenditures. Franchise fees continue to be a concern; however, interest income has increased due to the new investment plan.
- Quinn Bennion noted the Public Works Director search is on-going. The committee met on Friday to review applications. Interviews will be later this month or early September with the search process probably running through October.
- Dennis Enslinger has submitted his resignation. Staff will begin a search process for his replacement.

Adjournment

With no further business to come before the Committee, Council President Dale Warman adjourned the meeting at 7:15 p.m.

Dale Warman
Council President