



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 5/5/2020

DEPARTMENT: Legal

STAFF CONTACT: Ron Shaver/Daniel Yoza

SUBJECT: Consideration of Ordinance No. 20-15 granting a contract franchise to Kansas Fiber Network, LLC to construct, operate, and maintain a fiber communications network in the City of Olathe, and a Master License Agreement for Attachments to City Facilities.

ITEM DESCRIPTION:

Ordinance No. 20-15 grants a contract franchise to Kansas Fiber Network, LLC. The Master License Agreement for Attachments to City Facilities defines the relationship between Kansas Fiber Network, LLC and the City.

SUMMARY:

This Item was presented to the Council as a report item on April 21, 2020. Pursuant to Kansas law, and in order to protect the public right-of-way, the City requires any companies who wish to install facilities within the public right-of-way to obtain a contract franchise. When users desire to also attach their facilities to City-owned infrastructure assets within the right-of-way (e.g., underground conduit, streetlights or traffic signals), we also require a Master License agreement (MLA) which allocates legal responsibilities between the City and the franchisee in order to protect the City's infrastructure assets.

Kansas Fiber Network, LLC ("Kansas Fiber") is a broadband company that builds backbone networks in order to connect enterprise users such as wireless carriers, governmental entities, educational institutions, and medical facilities to broadband networks. Kansas Fiber does not provide residential service to end users, nor do they provide video or voice distribution. However, in order to comply with both Kansas law and federal telecommunications law which requires competitive neutrality in the use and regulation of the public right-of-way, Kansas Fiber must obtain a franchise before it can use the public right-of-way and provide service to its customers just as its competitors have been required to obtain previously. This not only ensures that similar telecommunications providers are treated in a similar manner, but also allows for uniform protection and stewardship of the public right-of-way. The franchise and MLA are substantively the same as those franchises the City has approved with other similar service providers.

Attached is a proposed franchise agreement between the City and Kansas Fiber ([Attachment A](#)). The franchise would allow Kansas Fiber to use the City's right-of-way to construct facilities for the purpose of providing telecommunication services in Olathe. The franchise would be for two (2) years with renewal for up to nine (9) additional two (2) year periods, or twenty (20) years total (the maximum term of a franchise under Kansas law).

The franchise provides that Kansas Fiber will have the right to construct, maintain and operate its facilities along, across, upon and under the public right-of-way. Such facilities must be constructed

and maintained so as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct the legal use by other utilities. Kansas Fiber's use of the public right-of-way will always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City (including, but not limited to, Section 6.06.040, Chapter 12.08, and 12.14 of the Olathe Municipal Code, which give the City Broad regulatory power over the public right-of-way). The City may exercise its home rule powers in its administration and regulation related to the management of the public right-of-way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory.

Also attached is a draft MLA (Attachment B) which calls for the City to collect an up-front fee of \$1.87/linear foot for each fiber line Kansas Fiber installs within the City's right-of-way. The agreement also calls for the City to collect an up-front fee of \$5.00/linear foot for each fiber line Kansas Fiber installs within existing City conduit. These rates are based on market standards for fiber line and conduit co-locations paid by other fiber providers in the city as well as other area jurisdictions and would be in addition to the City's permit fees and other related fees the City typically charge for entities locating facilities in City right-of-way (plus bonding and insurance requirements).

Kansas Fiber was formed 10 years ago by a partnership of 29 Independent Local Exchange Companies (rural telephone companies) in Kansas and Oklahoma and is a Kansas owned and operated company. It is headquartered in Wichita, KS with a regional office in Overland Park, KS. They have installed and maintain over 3,000 miles of fiber optics that serve customers in Kansas, Oklahoma, Missouri, Colorado and Nebraska.

FINANCIAL IMPACT: The City will receive compensation for any facilities located in the City's right-of-way in accordance with the MLA and the franchise.

ACTION NEEDED:

Approve Ordinance No 20-15 granting a contract franchise to Kansas Fiber Network, LLC, to construct, operate, and maintain a fiber communications network in Olathe, and a Master License Agreement for Attachments to City Facilities.

ATTACHMENT(S):

Attachment A - Ordinance No. 20-15 Kansas Fiber Network, LLC Franchise

Attachment B - Kansas Fiber Network, LLC Master License Agreement