

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 6.b

Title:

Recommendation to Approve Intergovernmental Agreement with St. Charles Park District for Fiber Services and Approval of Budget Addition to Build the Fiber Extensions

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: April 22, 2019

Proposed Cost: \$181,000

Budgeted Amount: \$

Not Budgeted: **Executive Summary** *(if not budgeted please explain):*

The St. Charles Park District approached the City in 2018 inquiring about the feasibility for the Park District to extend and use the City fiber system to connect five of their facilities. Over the last year, City staff and Park District staff have worked on an agreement and the details for the connections. The agreement has very similar terms to the agreement the City has with School District D303, and the connection architecture will be exactly the same as what the City does for D303. The rates for the services will also follow the exact same formula as D303.

This additional customer on the fiber network is expected to be beneficial to all parties who use the system (City, D303, and Park District). The backbone system has plenty of capacity for these new connections. Since the rates are based on spreading the fixed costs of the system across the users, rates are expected to be positively influenced by increasing users without substantially increasing our capital or operating costs. Upon completion of this work, a refresh of our rate study will be performed.

The budget addition is to provide funds to build the extensions to the five facilities. The agreement includes provisions for the City to bill the Park District upon completion of the project, so this budget add will have offsetting revenue.

Park District and City legal counsels have reviewed and approved the document. The Park District is expected to discuss approval of the agreement tomorrow (April 23, 2019).

Attachments *(please list):*

*Intergovernmental Agreement *Budget Addition Form

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Approve Intergovernmental Agreement with St. Charles Park District for Fiber Services and Approval of Budget Addition to Build the Fiber Extensions.

INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
THE ST. CHARLES PARK DISTRICT
AND
THE CITY OF ST. CHARLES

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2019, by and between the St. Charles Park District, DuPage and Kane Counties, Illinois (“**Park District**”) and the City of St. Charles, an Illinois home rule municipality (“**City**”).

WITNESSETH:

WHEREAS, the City owns and operates an electrical transmission and distribution utility and has undertaken various telecommunications activities and improvements in support thereof; and

WHEREAS, the City has constructed and maintains a fiber optic telecommunications system that, among other things, transmits data and provides internet services to various City facilities and offices and includes a Backbone (defined below) and any extensions therefrom (“**Fiber Optic System**”); and

WHEREAS, the Fiber Optic System is connected to the City’s operations center, *via* a backbone system (“**Backbone**”), as depicted on Exhibit A attached hereto and incorporated herein; and

WHEREAS, the Fiber Optic System contains extra capacity (“**Dark Fiber**”) that is not being utilized by the City and the Park District can benefit from access to and use of the Dark Fiber; and

WHEREAS, the Park District desires to obtain a license from the City to use a portion of the Fiber Optic System and the City desires to grant the Park District such a license; and

WHEREAS, the Part District desires to connect the following five (5) of its facilities to the Backbone: (i) the Pottowatamie Community Center, located at 8 North Avenue, St. Charles, Illinois 60174; (ii) the Baker Community Center, located at 101 South Second Street, St. Charles, Illinois 60174; (iii) the Otter Cove Aquatic Park Center, located at 3615 Compton Hills Road, St. Charles, Illinois 60175; (iv) the Denny Ryan Service Center, located at 37W755, Bolcum Road, St. Charles, Illinois 60175; and (v) the Norris Recreation Center, located at 1050 Dunham Road, St. Charles, Illinois 60174 (collectively, the “**Park District Facilities**”); and

WHEREAS, in order for the Park District to utilize the Fiber Optic System, it must connect its facilities to the Fiber Optic System *via* optical switch equipment; and

WHEREAS, the Parties are authorized by Article VII, Section 10 of the Constitution of the State of Illinois, and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) to enter into this intergovernmental agreement.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement and other good and valuable consideration of which the Parties hereby acknowledge, the City and the Park District agree as follows:

I. Incorporation of Recitals. The recitals set forth above are incorporated into and made a part of this Agreement.

II. Term and Termination. This Agreement shall commence on _____, 2019, and shall terminate at 11:59 p.m. on _____, 2029. The parties may extend this Agreement by mutual written consent. Notwithstanding the aforementioned ten (10) year term, the either party may terminate this Agreement at any time without cause, by providing written notice thereof at least one (1) year in advance; however, the Park District shall thereupon forfeit any sums theretofore paid to City hereunder.

Upon any termination of this Agreement, the City may remove at its expense, or abandon in place, all City-owned equipment located on the Park District Facilities as City deems appropriate, and the Park District agrees to provide the City with reasonable access to said facilities as required by City for the purposes of removal of City-owned equipment.

III. Grant of License. Subject to the provisions of this Agreement, the City hereby grants to the Park District a non-exclusive license for the use of five (5) pairs of fibers on the Backbone. These fibers, and any additional fibers that may be licensed via this agreement, are to be used for Park District business use only and shall not be relicensed or otherwise repurposed for use by third parties.

IV. Connection to the Backbone and the Construction of the Extensions. The City shall design and install, at its cost and expense, the necessary equipment to connect each Park District Facility to the Backbone via an "Extension". The City shall not commence construction at any of the Park District Facilities until the Park District has approved in writing the equipment to be installed and the location thereof. Once an Extension has been constructed and is fully operational the City shall send the Park District an itemized bill for the actual costs incurred by City to design and install such Extension. The Park District shall pay all invoices submitted by the City hereunder in accordance with the *Local Government Prompt Payment Act* (50 ILCS 550/1 *et seq.*). Upon receipt of payment, the Extension shall become the property of the Park District.

To allow the City the ability to run fiber optic lines from the Extensions, the Park District shall provide the City with a location at each Park District facility for the installation of a fiber optic patch panel. Upon any termination of this Agreement, all Extensions that are solely used by the Park District will become the Park District's responsibility, including the responsibility to either:

(i) establish and pay for any required pole attachments, or (ii) remove fiber from ComEd poles. Should the Park District and ComEd not be able to come to an agreement, and ComEd insists on removal of the fiber, the cost for removal shall be borne by the Park District. For Extensions that are shared with the City or other parties, ownership of said Extensions will revert to City and the City shall be responsible for all maintenance thereof. The City shall have a non-exclusive permanent non-transferrable license to maintain any of such Extensions for the life thereof.

V. Additional Fibers. The Park District shall have the right to obtain additional licenses to use additional Dark Fiber, if capacity is available. The addition of fibers shall be designed and installed in accordance with Section IV of this Agreement and the maintenance fee required in Section VI shall be adjusted accordingly.

VI. Maintenance Expenses. The City shall restore, repair and Maintain (defined below) the Backbone and Extensions for the duration of this Agreement. In exchange for providing the services under this Section, the Park District shall pay the City the sum of \$4,512.00 per year (\$376.00 per month) for each pair of fibers connected to the Park District Facilities and also pay the City, on an annual basis, \$0.08 per foot for each pair of fibers extended from the City's Backbone to Park District Facilities. The measurement of the number of feet for which the Park District shall pay an annual maintenance fee shall be established *via* an optical time-domain reflectometer (“**OTDR**”) or another method mutually agreed upon by the parties.

The fees paid to the City under this Section shall be reviewed by the parties every other year (on or about the contract date) and shall be equitably adjusted account for increases or decreases in the costs incurred by the City for its obligations under this Section. Any such cost revisions that occur during the year will be reflected on the next annual payment.

Generally maintenance shall be defined as JULIE locations for underground fiber, and labor and material projects that do not relate to new fiber placement and where labor is less than 16 man hours and material costs are less than \$1,000. The City shall assist the District in repairs on extensions related to acts of God; however, repairs that exceed the maintenance threshold above shall be considered capital work as defined below. Repairs related to third party incidents are addressed below.

Capital work shall be defined as any new fiber placement, either as an addition or replacement of existing. The City may provide a quotation for capital projects but not obligated to provide such.

Parties agree that repair and restoration of damages related to third party negligence, for example a vehicle accident, will be processed by the City to the third party. Should there be liquidated damages related to the loss of service or that the additional splice now creates unacceptable line losses, the District will be responsible for subsequent liquidated damage claim/suit against the third party. For major damage claims defined as damage that exceeds \$10,000 in total City expenses related to complete restoration of the damage, the City will make normal efforts to recover such expenses from the third party. City and District will mutually agree to settlement amounts for major damage claims. The District will be responsible for reimbursing the City for any unrecovered damage claims and will make the City whole. Any further litigation against the third party would be District responsibility

The first patch panel at the Park District Facilities will be considered part of the City maintained Fiber Optic System and will act as the maintenance demark. The City will take responsibility for maintenance of the patch panels with the District acknowledgement that City may use such patch panels for extension of the Fiber Optic System to other City locations, and District agrees to permit City access to such patch panels during normal business hours upon reasonable advance notice from City or pursuant to such procedures as hereafter established by City and District. The City use of spare fibers within a District extension shall not trigger the recapture provisions in section VIII below.

The City anticipates normal replacement of fiber after twenty (20) years of service. If not replaced for other reasons prior to twenty (20) years, the City will budget, plan, and schedule fiber Backbone replacements after a run has been in service for twenty (20) years. Replacement will be completed before a run reaches twenty-two (22) years in-service. If the Park District is still utilizing the Extensions at the end of the specified life of the Extensions or this Agreement has not otherwise been terminated, the Park District shall be responsible for the replacement of the Extension. The Park District shall consult with and coordinate any Extension replacement with the City.

The Park District hereby grants to the City a license for the term of this Agreement, to enter on to the Park District Facilities to perform the Maintenance obligations in this Section.

VII. Relocation of Fiber Optic System. With regard to relocations of the Fiber Optic System, the Backbone relocations will be performed by the City without any additional cost to the Park District. For relocations of Extensions, the City shall provide as much advanced written notice as possible concerning such potential relocations. Subsequent to receipt of the aforementioned notice, the City shall conduct an assessment of the proposed relocation, at the sole cost of the Park District. As part of the assessment, the City shall provide the Park District with an estimate of the costs associated with relocating the Extension, which estimates shall include construction costs and any professional fees (e.g. architect and/or engineering fees). The Park District may accept the City's estimate for such work or it may seek an independent architect and/or engineer and contractors to complete the work. In the event the Park District approves the City proceeding with the relocation, the Park District shall pay to the City the actual costs incurred for the project in accordance with an itemized invoice submitted to the Park District by the City. If, however, the Park District chooses to relocate the Extensions on its own, the project and materials shall be first approved by the City, which approval shall not be unreasonably withheld. The City shall not be responsible for maintaining fiber that does not meet the material and installation standards of the City, but shall remain responsible for the Maintenance of fiber previously approved by the City pursuant to this Section VII.

VIII. Co-Location of City Equipment. The City shall have the right to co-locate City-owned equipment ("**City Equipment**") on the Extensions and to the Park District Facilities patch panels. The City shall design, construct, and maintain the City Equipment as its sole cost and expense. Prior to the co-location of any City Equipment at any Park District Facility, the City shall provide the Park District with plans and specifications for co-locating such City Equipment for the Park District's approval, which approval shall not be unreasonably withheld.

The City shall reimburse the Park District for all labor expenses incurred by it while the City installs any City Equipment within or on Park District Facilities.

All extension facilities paid for by District outside of the City are subject to possible recapture (not to exceed 50% of installation cost of the subject portion) if used to provide services to other than the City or District within the contract term.

IX. Fiber Data Loss. The City shall be responsible for managing and minimizing fiber losses over the Fiber Optic System. Fiber losses shall be limited to the dB losses per mile of fiber, 0.3 dB per splice, and 0.75 dB per mated pair patch panel termination. Should the losses on any line exceed the limit, the City will promptly engineer and perform repairs to the applicable line(s) at its sole costs and expense. The City shall be responsible for Backbone repairs and resplicing/reterminating on extensions should those elements be determined to be the cause of the data loss. The Park District shall be responsible for Extension replacement should the unacceptable losses be related to dB losses per mile in the fiber itself or due to the number of splices, except as related to splices made pursuant to the City co-locating City Equipment and additional extensions. Should any fiber pair that is currently within the allowable losses cease to be adequate for Park District broadband and replacement of the Backbone elements and elimination of splices is deemed to have reasonable expectation of rectifying the deficiency, the City and the Park District may enter into an agreement to make such modifications on a case by case basis.

X. Location of Fiber Optic Lines on ComEd Poles. The City has an agreement with ComEd to allow the placement of fiber optic lines on ComEd poles for fiber optic line extensions that will connect to the Park District Facilities outside of the corporate boundaries of St. Charles. The City shall pass through such costs for such fiber optic line extensions extending outside of the corporate boundaries of St. Charles to the Park District as part of the annual billing.

XI. Network Architecture and Network Problems. The extensions from the existing backbone to the District facilities are currently of radial design. For cable cuts or problems, the City will make reasonable efforts to restore service as promptly as possible. Availability of City staff to address fiber extension restoration after normal business hours, or during City emergencies, may not be acceptable to the Park District. The Park District, at the Park District's expense, may request installation of redundant fiber feeds and/or development of a mutually acceptable contractor that can be deployed when City staff is not available. Should a contractor be necessary to provide restoration services, the contractor costs shall be borne by the Park District.

For Fiber Optic System issues, upon knowledge of the problem, the Park District will notify the City of the suspected problem. The City will make reasonable efforts to respond and perform diagnostic testing up to the patch panel at the Park District Facilities. The normal hours of the City Meter & Communication Department is 6:30AM to 3PM, Monday through Friday. If the problem is located on the portion of the Fiber Optic System that the City is responsible for maintaining, the City shall make reasonable efforts to restore service as quickly as possible. If City staff is not available, the use of a mutually acceptable contractor for restoration services can

be requested by District, and District will be responsible for the cost. Should the problem exist within a Park District facility, and beyond the patch panel demarcation point, City staff time shall be billable to the Park District if the City is required for more than two (2) independent problems with the Fiber Optic System.

XII. Taxes. The Park District is a tax-exempt entity; however, in the event any taxes are assessed on the Fiber Optic System and or the Extensions as a result of the Park District's use thereof, the Park District shall be responsible for such taxes.

XIII. City Ownership of Fiber Optic System. The Park District acknowledges the Backbone Fiber Optic System is and will remain the sole property of the City. Monetary contributions, now or in the future, by the Park District do not indicate ownership of equipment or facilities unless explicitly stated as such. The Park District also acknowledges that the Backbone installed by the City may be used to provide communication services to City facilities or facilities of others at Cities sole discretion.

XIV. Insurance.

A. Both Parties agree to provide, at their own cost and expense, the following insurance during the Term of this Agreement:

- i. *Commercial General Liability Insurance*, on an occurrence basis, in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;
- ii. *Umbrella or Excess Liability Insurance*, on an occurrence basis, in the minimum amount of \$5,000,000 per occurrence and in the aggregate;
- iii. *Worker's Compensation Insurance* in at least the minimum amounts required by law and *Employer's Liability Insurance* in the minimum amount of \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee for bodily injury by disease; and
- iv. *Automobile Liability Insurance* in the amount of no less than \$1,000,000 per accident covering liability arising out of any owned, non-owned and hired automobiles.

B. With the sole exception of Worker's Compensation Insurance, the Park District shall name the City, the City's employees and agents as additional insureds on all insurance policies required hereunder. With the sole exception of Worker's Compensation Insurance, the City shall name the Park District, the Park District's individual Board of Commissioners members, employees and agents as additional insureds on all insurance policies required hereunder. Both Parties shall provide the other with a certificate of insurance evidencing the insurance required under this Section XIV within ten (10) days of the last party to execute this Agreement.

- C. In the event either Party is a member of a self-insured risk pool and utilizes such for its insurance needs, such party may satisfy its obligation hereunder by obtaining insurance coverage substantially similar to that required herein; however, such insurance shall meet the minimum dollar coverage amounts.

XV. Miscellaneous Provisions.

- A. **Force Majeure** Performance by either party shall be excused by an unforeseen occurrence beyond the control of a party which causes a delay or total or partial failure of performance by such party, including but not limited to (i) acts of God; (ii) acts of failure to act on the part of any governmental authority other than the City or the Park District (including but not limited to changes in or enactment of laws, rules, regulations, codes, or ordinances subsequent to the date of this Agreement); (iii) acts of war or public disorders, civil violence or disobedience, blockages, strikes, lockouts, labor disputes, sabotage, insurrection or rebellion; (iv) floods, hurricanes, earthquakes, tornadoes, or other similar calamities; (v) explosions or fires; (vi) accidents in transportation; or (vii) vandalism or cable cuts.
- B. **Indemnification.** To the fullest extent permitted by law, the Park District covenants and agrees to indemnify, defend and hold harmless the City, the City's employees and agents from all claims, losses, damages, liabilities and expenses of any kind, including without limitation, attorneys' fees and court costs, arising out of, related to, or in connection with any negligent or willful act, omission, or breach of the Park District in connection with this Agreement.

To the fullest extent permitted by law, the City covenants and agrees to indemnify, defend and hold harmless the Park District, the Park District's individual Board of Commissioners members, employees and agents from all claims, losses, damages, liabilities and expenses of any kind, including without limitation, attorneys' fees and court costs, arising out of, related to, or in connection with any negligent or willful act, omission, or breach of the City in connection with this Agreement.

Notwithstanding the above obligations, each Party reserves the right to assert any and all defenses it may have to liability, including, but not limited to, the defenses afforded it under the *Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq.)*.

- C. **Default.** In the event either party fails to comply with any material obligation, duty, or responsibility under this Agreement, such party shall be in breach hereof. Should the breaching party fail to remedy such breach within thirty (30) days from receipt of written notice from the other party of such breach, the breaching party shall be in default and the non-defaulting party may terminate this Agreement and/or pursue any and all legal and equitable remedies available. No waiver of any default shall extend to or affect any subsequent default or impair any rights or remedies of the non-defaulting party.

- D. **Notices.** Any notices and communications required to be given under this Agreement shall be in writing and, except as otherwise expressly provided, shall be either (i) mailed by registered or certified mail, return receipt requested, postage prepaid, (ii) sent by electronic facsimile transmission, or (iii) personally delivered by hand against receipt therefor to the parties at the address set forth below, or such other address as any party may designate to the others by notice hereunder. All such notices shall be deemed to have been received on the date of personal delivery, electronic facsimile transmission, or, if mailed, on date of deposit with the U.S. Post Office.

To the City: City of St. Charles
 2 East Main Street
 St. Charles, IL 60174
 Attn: City Administrator

To the Park District: St. Charles Park District
 101 S. 2nd Street
 St. Charles, IL 60174
 Attn: Director of Park and Recreation

- E. **Compliance with Laws.** The Parties shall comply with all federal, state, county and municipal laws, rules and regulations that apply to the performance of each party's respective obligations under this Agreement.
- F. **Complete Understanding.** This Agreement sets forth all the terms and conditions, and agreements and understandings between the Parties relative to the subject matter hereof. Unless specifically provided herein, obligations of the parties shall survive termination of the Agreement.
- G. **Amendments.** No modifications, amendments, or waiver of any provision hereto shall be valid and binding unless in writing and signed by all Parties.
- H. **Binding Effect.** This Agreement shall be binding upon, apply and inure to the benefit of each Party and their respective legal representatives.
- I. **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party, which may be withheld in its sole discretion.
- J. **Governing Law.** This Agreement and the rights and responsibilities of the parties hereto shall be interpreted and enforced in accordance with the laws of the State of Illinois.
- K. **Authority to Execute.** Each signatory hereto represents and warrants that he/she has the proper and necessary corporate authority to execute this Agreement and bind his/her entity to the terms and conditions of this Agreement.

- L. **Waiver.** The failure of either party to demand strict performance of the terms and conditions of this Agreement on any one occasion shall not be deemed a waiver to demand strict performance on any future occasion.
- M. **No Third Party Beneficiaries.** The Parties to this Agreement agree and acknowledge that this Agreement is intended only for the benefit of the parties hereto, and no provisions of this Agreement are intended, either expressly or impliedly, to extend benefits or to provide rights of any kind to any person or entity who is not a party to this Agreement.

IN WITNESS WHEREOF this Agreement has been executed as of the date set forth above.

CITY:

PARK DISTRICT:

CITY OF ST. CHARLES

**BOARD OF COMMISSIONERS
OF ST. CHARLES PARK DISTRICT,
DUPAGE AND KANE COUNTIES,
ILLINOIS**

By: _____
Its: Mayor
Dated: _____

By: _____
Its: **President**
Dated: _____

ATTEST:

ATTEST:

By: _____

By: _____

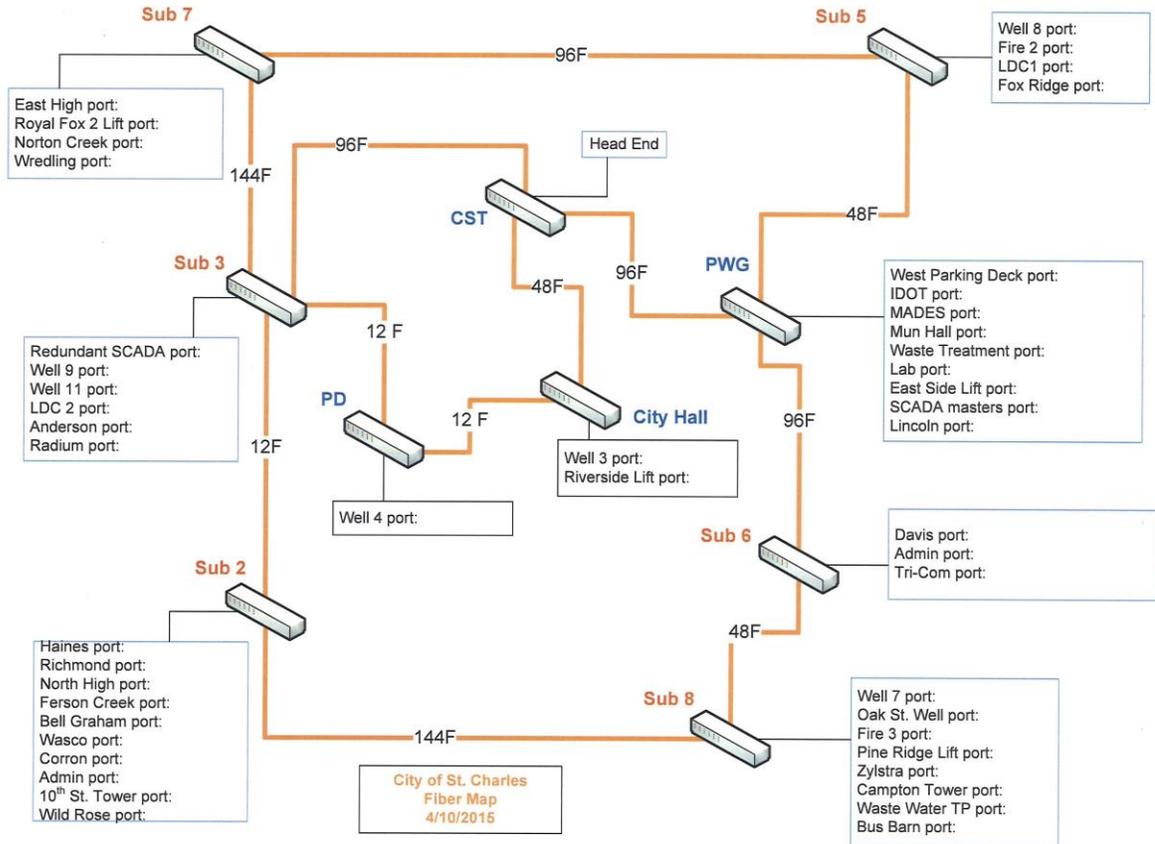
Its:

Its: **Secretary**

Dated: _____

Dated: _____

EXHIBIT A BACKBONE



BUDGET REVISION REQUEST FORM

Department: Communications

Date Requested: April 22, 2019

Purpose of Request/Comments (Attach additional pages if necessary)

Add funds to the Communications Budget to facilitate new extensions to the Park District.

This add has offsetting revenue from the Park District, which is included in the agreement between the City and the Park District.

City staff and contractors hired by the City will perform the new extension work.

This budget add is only valid if the City and the Park District enter into the agreement to extend fiber services.

Equal Dollar Transfer

Amount _____

Account Numbers

<i>From</i>		<i>To</i>	
Accounting		Accounting	
Unit: _____	Account: _____	Unit: _____	Account: _____
Activity: _____		Activity: _____	

Addition (or Decrease) to Department Budget

Accounting
Unit: 804530 Account: 56213 Amount \$181,000

Activity: TBD

Originator: T Bruhl April 22, 2019
Date

Department Head: _____
Date

Dir. Of Finance/Administration: _____
Date

For Finance Use Only

Revision entered and updated

_____ Date

By: _____