



Meeting Date: 08/17/2022
Agenda Item: 6.2

CITY COUNCIL MEETING STAFF REPORT

REPORT TO: Mayor North & City Council
REPORT FROM: Alexander J. Henderson, City Manager; ICMA-CM **REVIEWED BY:** MN
AGENDA ITEM: Fiber Optic Development and Operating Agreement
ACTION REQUESTED: Ordinance Resolution Motion Receive/File

EXECUTIVE SUMMARY

During the height of the pandemic, the city received several inquiries/complaints about existing internet options. The challenge of available existing options (through private providers) became evident as residents struggled with bandwidth speeds due to high usage. Much of those same challenges remain as more individuals work from home, attend school online, and utilize teleconferencing technology for doctor visits and more. The increase in network traffic, overall devices, and expansion of the internet of everything (IoE), are all driving forces that make a functional, reliable high performance network not only a desire, but a priority.

During the council’s workshops regarding the use of use of American Rescue Plan Act Funds (ARPA) funding, council provided direction to staff to solicit public feedback on use of ARPA funds through an online survey. The survey identified potential projects to utilize the funding for, and asked residents to rank them based upon priority. The installation of fiber broadband was ranked as the highest priority, followed by additional community planning efforts. Respondents also listed other priorities that necessitate a more reliable internet option, such as increasing our public safety camera network. As such, council directed staff to explore opportunities to improve upon Kingsburg’s broadband infrastructure. Subsequently, we have engaged both the non-profit and private sectors for options to complete a buildout that will allow all city residents and businesses the opportunity to connect to a new fiber optic internet option.

As part of the FY2023 budget and capital improvement project discussions, council approved the use of an inter-fund loan and ARPA funds to help pay for the construction of the new project, should an appropriate arrangement materialize. Over the last several months, staff has been working closely with Kingsburg Media Foundation (KBMF) and CVIN/Vast Networks (fiber provider) to finalize an agreement that establishes responsibilities for construction, maintenance, customer service, and identifies the economic financing structure which includes a loan by the City to KBMF to assist in the payment of KBMF’s share of the costs of installation of system and the terms of repayment of the loan to the city. Based upon the business structure of KBMF, the repayment of the loan by KBMF will only be secured by KBMF’s Subscriber accounts receivables. CVIN/Vast Networks may also be involved in financing a portion of the costs of installation of the system (not included in the loan).

Also, CVIN/Vast Networks and the City will enter into a formal agreement to further document the provisions of the CVIN/Vast Networks side letter attached to this staff report.

A summary of the project includes:

The build-out of approximately 17 (new) miles of conduit and fiber optic infrastructure that will provide coverage for all Kingsburg neighborhoods. Once installed, strategically placed access points will allow for high-speed internet access to all homes and businesses via either a Wi-Fi backhaul or direct fiber connection (direct

connection based upon location of subscriber). The 17-mile buildout will connect municipal buildings/facilities, park locations, and provide strategic access for current and future expansion of the system (both in and outside of city limits). The installation of this vital resource will impact our entire population, makes us more competitive for economic development and job creation, provides reliability for ongoing public safety efforts, and provides a local internet service provider to handle home installations, billing, and customer service. With just five franchisees delivering internet services to 97% of Californians, our options are limited. In Kingsburg, the accessibility to internet quality is often dependent upon where you live, as not all providers have their infrastructure equally distributed in the community.

Vast Networks will own and maintain the fiber, as well as provide the dedicated bandwidth. The bandwidth will be leased to Kingsburg Media Foundation, who will be the local internet service provider (ISP). Vast Networks will maintain the fiber optic cable including but not limited to servicing, repair and upgrading fiber as needed in partnership with KBMF. This partnership will allow us to give our residents and businesses another ISP option, including adding a low cost/reduced fee option for eligible households. That means more social equity, which also will make our community a leader in providing this fundamental service.

If the agreement is approved, Vast will begin working on their final design so that they can submit the necessary applications for city review and approvals. The fiber would be installed in the city right-of-way. Construction methods will include directional boring, open trench, and micro-trenching technology – all will be reviewed and approved by city staff. CVIN/Vast has the ability to complete the installation of ~10,000 ft. per week, and this project is estimated at approximately 90,500 feet. The completion of the work, however, will depend upon various factors, including design, permitting, weather, underground utility conflicts, city events, and the potential impact of road closures, etc. on regular travel and school activities. As such, city staff will work closely with the contractor to schedule segments of work to minimize resident and business impacts.

Once the network is installed, residents and businesses would request to be connected, working directly with Kingsburg Media Foundation. The city will assist in the marketing of the public-private project, and work collaboratively with KBMF on residential and business connections. The right of way development agreement does not prevent other providers from building their own networks or expanding fiber networks they already have in place. It also does not require any Kingsburg resident or business to change their existing internet service provider but would provide them with more choice and allow them to do so if they wish. Because the majority of connections will be through Wi-Fi, in-home installation is relatively easy and does not require construction outside of the city's right of way. For future developments, the city is working to establish an improvement standard that would have developers install conduit during construction, similar to how existing underground utilities are treated.

Non-City Loan Option

For purposes of due diligence, the parties have also engaged in conversations regarding the potential of building the infrastructure without city financing (loan). In this case, CVIN/Vast Networks would finance the construction and KBMF would be responsible for repayment of the financing. From the city's perspective, this option has both benefits and drawbacks.

Benefits

- The significant benefit is the elimination of the \$2.2M loan to KBMF. The city reduces their overall risk of non-payment, which could occur in case of default or poor subscriber activity.
- Keeps the funds available for city-use. It should be noted, however, that these funds have been earmarked for future use. The inter-fund loan proposed here is suggested only because it is a loan, which will be repaid with interest.
- Still provides an additional community option and provides all the benefits of next generation technology for Kingsburg.

Drawbacks

- Loss of participating in revenue sharing. Without the city’s loan, the Subscriber revenue (“Take Rate”) sharing structure would be removed. This would include the payment of the 4% loan interest (\$374,374.94), as well as future Take Rate revenue sharing after loan repayment.
- Higher costs for services utilized by the city. The structure of the Take-Rate and partnership model offered “credit swaps.” In addition, additional infrastructure buildouts (public safety cameras, additional facility needs, etc.) will increase the bandwidth requirements for city operations, which are offset by the future Take-Rate revenue and ongoing relationship with KBMF.
- Timeline of construction. CVIN/Vast Networks Board of Directors would need to approve the financing, which would delay the proposed construction schedule.

RECOMMENDED ACTION BY CITY COUNCIL

1. *Staff is seeking discussion and direction from council and the public on the proposed structure of the project. If council wishes to proceed with the partnership (city loan) structure, staff has provided council with the ability to move forward through the following:*
 - a. *Approve the proposed development and operating agreement with Kingsburg Media Foundation for the purposes of installing and operating a fiber optic network, subject to execution of the agreement by KBMF, final agreements with CVIN/Vast Networks, final city approvals of the system design, agreements, and necessary permitting, and any other actions determined necessary by the City Manager, City Attorney or the City Engineer.*
 - b. *Approve the proposed side letter with CVIN/Vast Networks in case of default and direct the City Manager and City Attorney to negotiate the terms of a formal agreement with CVIN/Vast Networks regarding long-term responsibilities.*

POLICY ALTERNATIVE(S)

1. Council could provide additional direction to staff to provide information to be brought back at a future date (TBD).
2. Council could choose to not proceed with the project outright.

REASON FOR RECOMMENDATION/KEY METRIC

1. Ensure Financial Stability
2. Promote Sustainable Development
3. Improve Community Communication

FINANCIAL INFORMATION

FISCAL IMPACT:

- | | |
|------------------------------|----------------------------|
| 1. Is There A Fiscal Impact? | <u>Yes</u> |
| 2. Is it Currently Budgeted? | <u>Yes</u> |
| 3. If Budgeted, Which Line? | <u>036 & 318 Funds</u> |

Financing

The project is to be funded using a combination of an intra-fund loan (to be repaid), along with use of \$1,000,000 in ARPA funds. Details of the structure of repayment are below.

- \$2,200,000 loan (\$1M in ARPA funds not included in loan repayment); 4% interest; 8 year payback; Total payback amount: \$2,574,374.94 (total interest payment to city: \$374,374.94, regardless of payback timing).

Loan Payoff Details

- KBMF will commence making monthly principal and interest payments under the Loan on the date which is thirty (30) days after the date KBMF sends the first billing invoices to Subscribers of the System and principal and interest payments shall be made on the same day of each and every month thereafter during the Loan Term.

- Until the total number of Subscribers reaches four hundred (400), principal and interest payments under the Loan shall be equal to fifty percent (50%) of KBFM's monthly net profit amount received from all Subscribers.
- When the total number of Subscribers reaches four hundred one (401), principal and interest payments under the Loan shall be equal to sixty percent (60%) of KBFM's monthly net profit for all direct connection and WiFi Subscribers.
- If at least fifty percent (50%) of the principal balance of the Loan has not been paid in full by the sixth (60th) month of the Loan Term, monthly payments of principal and interest under the Loan shall increase to seventy-five percent (75%) of KBFM's monthly net profit for all direct connection and WiFi Subscribers until all amounts due under the Loan are paid in full.
- KBFM will execute the documents required by the City to identify KBFM Subscriber accounts receivables and other assets of KBFM as security for repayment of the loan.

Post Loan Payments

- On the date that is thirty (30) days after the date the Loan is paid in full by KBFM and in further consideration of the City's covenants, the City's performance of its obligations and responsibilities under this Agreement and the use of the City's share (as defined below) to pay a portion of the costs and expenses of construction and installation of the System including equipment purchases, KBFM shall commence making monthly Take Rate payments to City in an amount equal to 15% - 40% of the monthly Net Profit from KBFM's monthly charges to direct connection Subscribers and Wi-Fi Subscribers (collectively "Monthly Take Rate Payments").
- At least 180 days prior to the date of final payment of the Loan, the Parties agree to negotiate in good faith to determine the appropriate City take rate percentage to be paid to the City. If the parties fail to agree on a post Loan take rate, KBFM will continue to pay a 27.5% Take Rate to the City until a post Loan Take Rate percentage is agreed to in writing by the City and KBFM.
- At any time during the Term of this Agreement the Parties may agree, in writing, to amend the Monthly Take Rate Payment based upon City bandwidth and IT service needs such as internet service, telephone service, public wi-fi service and public safety camera system services and other matters as agreed to by the Parties.
- Additionally, the City shall have the right to pay any Subscriber charges due by the City to KBFM by applying all or a portion of the Monthly Take Rate Payment due the City to the Subscriber charges due by the City to KBFM.

Example of Take-Rate Payments to City

For illustrative purposes, the city's monthly payment (P) is calculated by taking the total number of subscribers (S), multiplied by the average billing (B), multiplied by the total take rate (TR) percent in effect. ($S \times B \times TR = P$). The average billing is based upon the net profit of KBFM.

KBFM's net profit ("Net Profit") for direct FON connections shall be equal to the total monthly Subscriber charges billed by KBFM less the VAST Circuit Cost and less five percent (5%) of the total monthly subscription charges by KBFM to cover KBFM's operations and equipment costs. Net profit for Wi-Fi Connections shall be equal to the gross amount billed to the Subscriber multiplied by the Take Rate in effect at the time of billing. KBFM's net profit ("Net Profit") for direct FON connections shall be equal to the total monthly Subscriber charges billed by KBFM less the VAST Circuit Cost and less five percent (5%) of the total monthly subscription charges by KBFM to cover KBFM's operations and equipment costs. Net profit for WiFi Connections shall be equal to the gross amount billed to the Subscriber multiplied by the Take Rate in effect at the time of billing.

Total Subscribers	Average Billing to all Subscribers	Income Total	Take Rate	Payment to City
150	\$ 50.00	\$ 7,500.00	50%	\$ 3,750.00
400	\$ 50.00	\$ 20,000.00	50%	\$ 10,000.00
700	\$ 50.00	\$ 35,000.00	60%	\$ 21,000.00
1000	\$ 75.00	\$ 75,000.00	60%	\$ 45,000.00
1000	\$ 75.00	\$ 75,000.00	25%	\$ 18,750.00

- i. *Final row shows less take-rate percentage as it is illustrating a payment to the city after the loan has been satisfied. (Actual percentage to be negotiated)
- ii. Staff estimates 4,000+ customers that could become subscribers. Nationwide, the subscriber percentage for retail municipal systems after one to four years of operation averages 54 percent.

Term of Agreement

- The term of this Agreement shall commence on Commencement Date and run until midnight on the date that is twenty (20) years after the Commencement Date (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for two additional terms, each of ten (10) years, commencing on the twentieth (20th) anniversary and the thirtieth (30th) anniversary of the Commencement Date

ATTACHED INFORMATION

1. PowerPoint Presentation
2. DRAFT Development and Operating Agreement with Kingsburg Media Foundation
3. DRAFT Agreement with CVIN (Vast) in case of KBMF default
4. Fiber Optic Infrastructure Map
5. ARPA Survey Results