

**TO: HONORABLE CITY COUNCIL**

**FROM: CITY MANAGER DEPARTMENT: ADMINISTRATIVE SERVICES**

**DATE: JANUARY 17, 2006 CMR: 111:06**

**SUBJECT: REQUEST FOR COUNCIL DIRECTION ON LEGAL, FINANCIAL, OPERATIONAL, AND OTHER ISSUES REGARDING ISSUANCE OF A FIBER TO THE HOME REQUEST FOR PROPOSALS**

**RECOMMENDATION**

Staff requests that the Council, given its review of the discussion of the legal, financial, operational, policy, and other issues outlined below, provide direction on:

1. Whether to proceed with a Request for Proposal (RFP) for Fiber to the Home or other high-speed broadband services for the City of Palo Alto
2. What level of risk to the General Fund—in a range estimated to run from \$0.4 million to over \$16 million—would be acceptable within such a proposal
3. Whether or not Council is willing to entertain proposals using wireless technology which is gaining increased attention by municipalities seeking universal connectivity
4. Which business model or relationship with a provider (Model 1 or 2) Council prefers

**BACKGROUND**

At the October 24, 2005 Council meeting, staff presented to Council a report regarding the legal, financial, operational, and other issues involved in issuing such a Request for Proposals (RFP). At the start of that meeting, however, four Council Members recused themselves from the discussion due to potential conflicts of interest. The City Attorney then clarified that to approve a contract arising from an RFP, five votes—a unanimous vote of the remaining five Council members--would be necessary to see the RFP process to completion. Since Council members were not certain that all five would unanimously support such a program, they did not want to direct staff to proceed with an effort that Council could not see through to completion. Therefore, they agreed to postpone discussion of the staff report until the new Council is seated in January, 2006.

The October 24 staff report (398:05) (Attachment A) describes the chronology of the FTTH effort in Palo Alto; the legal, financial, and operational implications of proceeding with the RFP; and policy issues for discussion by Council.

As updates to the October 24, 2005 staff report, please see the following revised sections: Legal Issues, Wireless System Option, and Resource Impact. In addition, please refer to Attachments B and C which summarize, respectively, the wireless efforts of cities throughout the country, and Fiber to the Home projects of other cities in California.

### Legal Issues

The City Attorney's Office has reviewed all legal points previously presented to the City Council. While significant legal issues remain, none constitute "showstoppers". The City may proceed with the RFP and examine all of the legal concerns previously outlined, and we believe that all of those legal matters can be addressed in order to allow the project to proceed. In addition, a new review of the outside counsel and internal city attorney resources needed for the present proposal has allowed us to reduce the potential cost estimate for legal review and preparation of the RFP.

### Wireless System Option

The October 24, 2005 staff report requests Council clarification of its intention with regard to wireless technology with transmission speeds of less than 100 Mbps (see pages 8-9). In addition to the discussion there, staff would like to add the following:

A precedent has been set in Philadelphia and is under consideration in San Francisco in which the vendor builds the system at no cost to the City. In addition, smaller cities such as Mountain View, Sunnyvale, Milpitas, Cupertino and Santa Clara have authorized citywide, low- or no-cost WiFi service. In December 2005, Sunnyvale selected MetroFi—the vendor serving Santa Clara and Cupertino—to establish a free, citywide, wireless service. Residents will receive free access in exchange for accepting a half-inch advertising strip at the top of their Web browser at all times. Residents in Santa Clara and Cupertino currently pay \$19.95/month for the service (without ads), but following the Sunnyvale implementation, MetroFi will offer these cities the free-with-ads service option as well. The speed on all three cities' networks is 1 megabit per second for downloads and 256 kilobits per second for uploads--comparable to typical DSL speeds. Tropos Networks implemented a 5-square-mile mesh network in Milpitas that gives police officers, firefighters, and building inspectors, among others, access to data speeds up to five megabytes per second. The network went live in summer 2004.

In November 2005, Mountain View approved Google's offer to build a free WiFi network across the city. Google claimed it would take just two months to build out the network, at no cost to the city. According to the November 15, 2005 staff report, "The City potentially could receive an annual payment of approximately \$12,600 [adjusted annually for increases in the Consumer Price Index (CPI)] for the placement of Google equipment on City-owned light poles. All installation and maintenance costs will be borne by Google, and utility costs will be paid by the City and fully reimbursed by Google, which is estimated to be \$3,000 to \$4,000 per year." (Attachment B: Municipal Wireless Efforts across the United States summarizes these efforts.)

Staff recommends that Council leave open the possibility of wireless technology to provide universal internet access and connectivity at relatively low cost. Recognizing the current limitations of wireless versus fiber (e.g., bandwidth, security issues), it is important to note that a wireless network build-out for the 15-18 square miles east of Highway 280 could be achieved for \$3 million. This estimate is based on the per-square mile costs of comparable projects around

the country, and assumes that the dark fiber infrastructure could be used as a backhaul for the wireless network.

**RESOURCE IMPACT**

Resources expended on proceeding with the RFP would include staff time and outside legal costs. Please note that any incremental legal or other non-staff outlays would require a new appropriation in the General Fund 05-06 and Enterprise Fund budget.

Staff estimates that approximately 580 hours of ASD and Utilities staff time, at an estimated cost of \$41,000, would be expended to develop and issue the RFP, review responses to the RFP, and select the most responsible bidder. In addition, an estimated 360 hours of City Attorney staff and outside counsel time would be expended, at an estimated cost of \$75,000 to \$100,000. If the RFP issuance spurs a legal challenge, those additional costs are estimated at \$250,000 to \$750,000 or more if the challenge becomes protracted.

**POLICY IMPLICATIONS**

Policy implications of this report are discussed above.

**ENVIRONMENTAL REVIEW**

The actions requested in this report do not constitute a project for the purposes of the California Environmental Quality Act.

PREPARED BY: Joe Saccio, Deputy Director, Administrative Services  
Nancy Nagel, Senior Financial Analyst, Administrative Services  
Blake Heitzman, Manager, Utility Telecommunications  
Grant Kolling, Senior Assistant City Attorney

DEPARTMENT HEAD APPROVAL: \_\_\_\_\_  
CARL YEATS  
Director, Administrative Services

CITY MANAGER APPROVAL: \_\_\_\_\_  
EMILY HARRISON  
Assistant City Manager

**ATTACHMENTS**

Attachment A: CMR: 398:05: “Request for Council Direction on Legal, Financial, Operational, and Other Issues Regarding issuance of a Fiber to the Home Request for Proposals”

Attachment B: Municipal Wireless Efforts Across the United States

Attachment C: Cities in California With Optical Fiber Networks