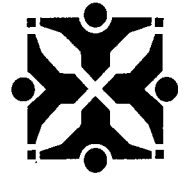


# City of Columbia

701 East Broadway, Columbia, Missouri 65201



**Agenda Item Number:** B 148-15

**Department Source:** Water & Light

**To:** City Council

**From:** City Manager & Staff

**Council Meeting Date:** 6/1/2015

**Re:** Charter Fiberlink-Missouri, LLC dark fiber agreement.

## Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Agreement

**Supporting documentation includes:** None

## Executive Summary

Charter Fiberlink-Missouri, LLC has need for a fiber optic point to point connection between two Charter facilities for networking purposes and desires to enter into an agreement with the City to use two unused (dark) strands on Water and Light's fiber optic system. Water and Light currently has many customers that utilize dark strands of its fiber optic system. Water and Light will receive two hundred fifty dollars (\$250.00) per month for one point to point connection as depicted in Attachment A of the agreement.

## Discussion

Charter Fiberlink-Missouri, LLC has need for a fiber optic point to point connection between two Charter facilities for networking purposes and desires to enter into an agreement with the City to use two unused (dark) strands on Water and Light's fiber optic system. This dark fiber will be utilized to create a communications circuit from a Charter Communications facility on Boone Industrial Drive to a node located at 9<sup>th</sup> and Ash. These facilities can be seen on Attachment A of the dark fiber agreement.

Water and Light currently has many customers that utilize dark strands of its fiber optic system. Water and Light will receive two hundred fifty dollars (\$250.00) per month for one point to point connection as depicted in Attachment A of the agreement.

## Fiscal Impact

**Short-Term Impact:** Water and Light will receive two hundred fifty dollars (\$250.00) per month for one point to point connection

**Long-Term Impact:** Should Water and Light install at Charter's request, any additional point to point connections or request connections to create a ring, Charter shall pay Water and Light the following amounts:

- (1) for each full calendar month that a ring is in place, a recurring fee of three thousand eight hundred forty seven dollars (\$3,847.00) per month for each ring.
- (2) for each calendar month that a point to point connection is in place, an additional two

# City of Columbia

701 East Broadway, Columbia, Missouri 65201



hundred fifty dollars (\$250.00) per month per point to point connection.

## Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

Strategic Plan Impact: Infrastructure

Comprehensive Plan Impact: Infrastructure

## Suggested Council Action

Approval of an ordinance to enter into an agreement with Charter Fiberlink-Missouri, LLC for the use of two unused (dark) strands on Water and Light's fiber optic system.

## Legislative History

None

  
Department Approved

  
City Manager Approved

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 148-15

**AN ORDINANCE**

authorizing an agreement with Charter Fiberlink-Missouri, LLC for the use of the Water and Light Department's fiber optic cable system; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute an agreement with Charter Fiberlink-Missouri, LLC for the use of the Water and Light Department's fiber optic cable system. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor and Presiding Officer

APPROVED AS TO FORM:

\_\_\_\_\_  
City Counselor

## **AGREEMENT**

### **Between the City of Columbia, Missouri, and Charter Fiberlink – Missouri, LLC for the use of dark fiber optic cable strands**

This Agreement (“Agreement”) between the City of Columbia, Missouri, a municipal corporation (hereinafter referred to as the “City”) and Charter Fiberlink-Missouri, LLC (hereinafter “Charter”), a limited liability corporation organized in the State of Delaware and with authority to transact business in the State of Missouri, is entered into on the date of the last signatory to this Agreement (“Effective Date”) City and Charter are each individually referred to herein as a “Party” and collectively as the “Parties”.

WHEREAS, the City has constructed a single mode fiber optic cable system linking various City facilities and forming a geographically complete fiber optic loop; and

WHEREAS, Charter has need for a fiber optic point to point connection between two Charter facilities for networking purposes; and

WHEREAS, the City and Charter wish to enter into an agreement for Charter to use two unused (dark) strands on City's fiber optic system.

NOW, THEREFORE, in consideration of the mutual covenants set out herein, the City and Charter agree as follows:

#### **1. USE OF CITY FIBER OPTIC SYSTEM**

City shall maintain a single mode fiber optic cable system Charter shall have the right to use two dark fiber strands on a circuit route path depicted in the diagram in Attachment A, which is incorporated herein by reference. Charter may request additional point-to-point services. Such requests may be granted or denied solely at the discretion of the City. Charter agrees that it will use the dark strands only for Internet-type services and for other purposes allowed by law.

#### **2. RADIAL LINES**

City shall install, at Charter’s cost, and maintain at the City’s cost, the radial fiber optic lines connecting the City’s fiber optic loop to Charter’s facilities. Both City and Charter agree that the City will own any such radial fiber optic lines that the City installs or maintains.

#### **3. ADDITIONS, MOVES AND NEW INSTALLATIONS**

Charter may from time to time request non-recurring adds, moves, or changes. The City will provide Charter with a written estimate of the labor and materials to do such work as required. Charter will issue a written authorization and, upon completion of work, pay the City the costs associated with the addition, move or change requested by Charter. Charter shall reimburse all expenses (including labor and materials) incurred by the City related to the additions, moves or new installations. Non-recurring services include, but are not limited to:

- a. Installation of a new fiber-optic radial to a facility.
- b. Moving existing fiber-optic radials.
- c. Physical reconfiguration of existing fiber-optic radial pairs.

4. MAINTENANCE OF FIBER OPTIC CABLE

All maintenance and emergency repair functions on the Fiber System shall be provided by the City. The City shall make reasonable efforts to repair any damage to its Fiber System that disrupts Charter leased fiber within 24 hours after receiving a report from Charter that service has been disrupted. The City shall provide fiber optic system repair service 24 hours per day, seven days per week.

To report any trouble issue, Charter shall call the City of Columbia outage contact number: 573-875-2555.

The City and Charter agree that Charter's use of the fiber optic cable system is an accommodation to Charter. Under no circumstance shall Charter's use of the fiber optic cable system take priority over the City's use of the City's fiber optic cable system. In the event of an emergency which disrupts service on the fiber optic cable for both Charter and the City, the City shall repair any damage to its Fiber System that disrupts the City's use of the fiber optic before repairing Charter's service.

5. PAYMENTS

For the use of the Radial Leased Fiber facility depicted in Attachment A, Charter shall pay to the City on the first business day of each month the following amount: two hundred fifty dollars (\$250.00) per month for one point to point connection depicted in Attachment A.

Should City install at Charter's request, any additional point to point connections or request connections to create a ring, Charter shall pay City on the first business day of each month the following amounts: (1) for each full calendar month that a ring is in place, a recurring fee of three thousand eight hundred forty seven dollars (\$3,847.00) per month for each ring; and (2) for each calendar month that a point to point connection is in place, an additional two hundred fifty dollars (\$250.00) per month per point to point connection.

The above pricing shall remain in effect during the initial term of this lease. Thereafter, City may adjust the price of the payments at lease renewal. If Charter objects to the amount of any price increase, it may negotiate the amount of the payments with the City. If an agreement is not reached on the amount of the payments, Charter may terminate this agreement by rejecting contract renewal.

6. TERM

This agreement shall become effective on the date it is executed by the City and shall remain in effect for five (5) years ("Initial Term"). Thereafter, the agreement shall automatically be renewed for successive terms of one (1) year unless the agreement is terminated pursuant to the provisions of this Agreement.

7. TERMINATION

a. Termination for Convenience by Charter during the Initial Term. During the Initial Term, Charter may terminate this Agreement for convenience upon thirty (30) days' written notice with an early termination liability to the City as follows: fifty percent (50%) of remaining monthly recurring cost if terminated during years one (1) through three (3), twenty five percent (25%) of the remaining monthly

recurring cost if terminated during years four (4) and five (5).

b. Termination for Convenience by City during the Initial Term. During the Initial Term, City may terminate this Agreement for convenience upon twelve (12) months written notice.

c. Termination for Convenience by either Party after the Initial Term. After the Initial Term, except as may be provided elsewhere in this Agreement, either Party may terminate this agreement by giving the other Party at least twelve (12) months written notice prior to the date of termination.

d. Removal of one or more sites. If Charter wishes to remove one or more specific sites from the Agreement, it may do so by giving the City at least one month written notice.

e. Termination due to law. In the event it is determined by the City that a Missouri Municipality may not legally offer the services contemplated herein, this agreement shall immediately terminate and neither party shall have any claim upon the other as a result of such termination.

f. Effective date. Any termination of the Agreement or removal of a site shall become effective on the last day of the month.

#### 8. SOLE BENEFIT OF PARTIES

This Agreement is for the sole benefit of the City and Charter. Nothing in this agreement is intended to confer any rights or remedies on any third party.

#### 9. LIABILITY

In no event, whether as a result of breach of contract, tort liability or otherwise, shall either Party or its agents or employees be liable to the other Party for indirect, economic or consequential damages of any nature.

#### 10. NOTICES

Notice under this agreement shall be given in writing and may be hand delivered, sent by U.S. Mail or faxed as follows:

If delivered to City:  
Attn: Director of Water & Light  
Columbia Water & Light Department  
105 East Ash  
P.O. Box 6015  
Columbia, MO 65205  
Fax: (573) 443-6875

If delivered to Charter:  
  
Charter Fiberlink – Missouri LLC  
12405 Powerscourt Drive  
St. Louis, MO 63131  
Attn: Legal – Operations

With a copy to:  
Charter Communications  
6399 Fiddlers Green Circle, 6<sup>th</sup> Floor  
Greenwood Village, CO 80111  
Attn: Sue Weiske, Esq.

A Party may change the address to which, fax number to which or official to whom notice is to be given by giving written notice of such change to the other Party. Upon any change of address or assignment or transfer of this Agreement, Charter and the assignee or transferee shall notify the City of the address change, assignment or transfer and shall provide the City with the names and addresses of all parties and individuals who shall receive notice from City as may be required by this agreement. Failure to provide City with such information shall be a breach of this Agreement.

11. ACCOMMODATION

Charter understands and agrees that the City owns, uses and maintains the Fiber Optic Cable System for City purposes. Charter agrees that this agreement to allow Charter to use two dark strands on the City's Fiber Optic Cable System is done as an accommodation to Charter and is not an agreement by City to create a transferable business interest in City property for the benefit of Charter or to subordinate City's use of the Fiber Optic Cable System to Charter.

12. CITY'S USE OF FIBER OPTIC CABLE SYSTEM

Charter's use of the two dark strands of the City's Fiber Optic Cable System shall not interfere with the City's use of the Fiber Optic Cable System. In the event Charter's use does interfere with the City's use of the Fiber Optic Cable System, City shall give Charter written notice of the interference. Charter shall have thirty (30) days from the date of such notice to end such interference. City's obligation to give Charter notice of such interference and an opportunity to end the interference shall not preclude the City from taking those steps it deems necessary to protect its operations from such interference. Failure of Charter to end the interference within thirty (30) days may be considered by City as breach of this agreement by Charter.

13. ASSIGNMENT

Charter shall not assign or transfer this agreement without prior written consent of City. In considering whether to give its permission to an assignment, City may consider the assets and reputation of the potential assignee and whether the assignee can fulfill the conditions of this agreement and whether such an assignment would be in the best interest of the City. No consent shall be required for an assignment or transfer to a parent, subsidiary of or an entity controlled by Charter, under common control with Charter, controlling Charter or merged or consolidated with Charter.

14. ENTIRE AGREEMENT

This agreement constitutes the entire Agreement and understanding of the parties. No modification, amendment or waiver of any provision of this agreement or any of the rights or obligations arising hereunder shall be valid unless in writing and executed by both Parties.

15. GOVERNING LAW/JURISDICTION

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Missouri and / or the laws of the United States, as applicable. The venue for all litigation arising out of or relating to this Agreement shall be Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of forum non conveniens.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the City and Charter have caused this document to be duly executed on the day and year first above written by their respective duly authorized officers.

**CITY OF COLUMBIA, MISSOURI**

By: \_\_\_\_\_  
Mike Matthes, City Manager

ATTEST:

By: \_\_\_\_\_  
Sheela Amin, City Clerk

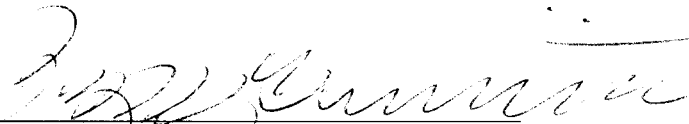
APPROVED AS TO FORM:

By: \_\_\_\_\_  
Nancy Thompson, City Counselor




**Charter Fiberlink – Missouri, LLC**

By : Charter Communications, Inc., its Manager

By:   
Peggy Giaminetti, Vice President, Circuit Operations

Date: 2/10/15

ATTEST:

 Tim Davis Dir, ENG  
Name and Title:

Date: 2/10/15

# ATTACHMENT A

## CIRCUIT PATH DIAGRAM OF CITY OF COLUMBIA

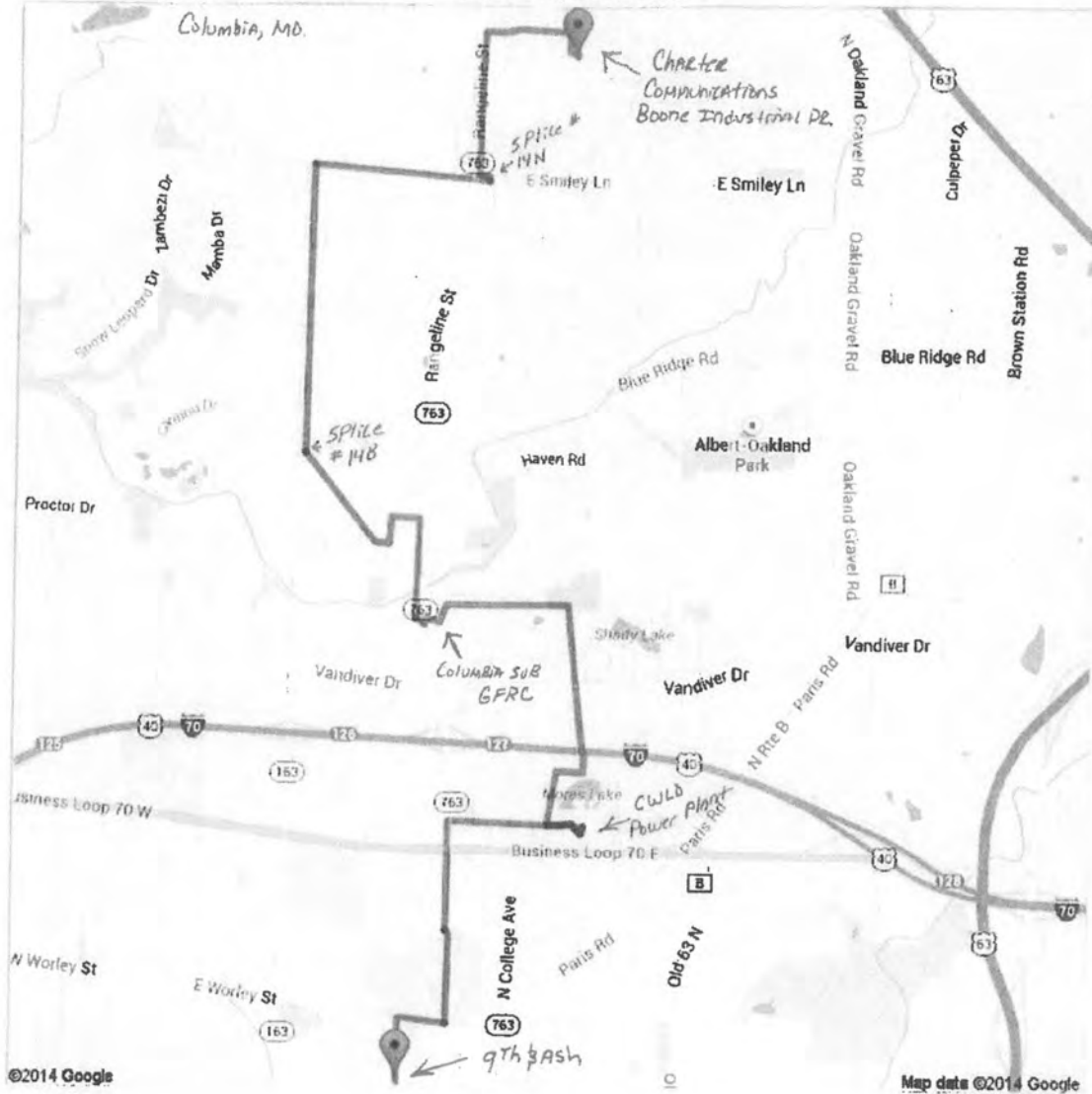
### POINT TO POINT FIBER ROUTE USED BY CHARTER

#### Attachment A: Circuit Route Path

Address	Splice Location	Coordinates
---------	-----------------	-------------

1510 E. Boone Industrial Dr.	- Splice LOC14R	- 38.998366,-92.318092
------------------------------	-----------------	------------------------

Downtown 9th & Ash	- Splice LOC3Z	- 38.95389,-92.327588
--------------------	----------------	-----------------------



• Charter Communications; Circuit 52P - 9th & Ash to Boone Industrial Drive