



# City of San Leandro

Meeting Date: October 17, 2011

## Staff Report

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**File Number:** 11-243

**Agenda Section:** ACTION ITEMS

**Agenda Number:** 10.A.

**TO:** City Council

**FROM:** Lianne Marshall  
Interim City Manager/Executive Director

**BY:** Luke Sims  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Staff Report on a License Agreement with San Leandro Dark Fiber for the Installation of Fiber Optic Facilities in City Conduit

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### RECOMMENDATIONS

Staff recommends that the City Council approve the attached resolution authorizing a License Agreement with San Leandro Dark Fiber for the purpose of installing fiber optic facilities within the City's existing conduit.

### BACKGROUND

Early in 2011, the City of San Leandro received a proposal from OSIsoft, a local software company, to license an approximately 10-mile loop of City conduit for the purpose of installing fiber optic cable. The loop would be used to provide extremely high-speed data communications for OSIsoft as well as other businesses that opt to tie in to the system. This high speed broadband service has the potential to serve as a business development tool, positioning San Leandro to attract and retain companies that rely on high-speed internet connectivity and large quantities of data.

The License Agreement is an agreement between SL Dark Fiber LLC (a corporation formed by OSIsoft to manage the proposed fiber operation) and the City of San Leandro (City) for the use of City conduit to install a fiber optic loop. Staff has worked over the past several months to negotiate a license agreement with SL Dark Fiber that achieves the following goals:

- Limit any City exposure to financial risk resulting from the project;
- Protect the security of existing City infrastructure and data systems;

- Minimize the regulatory burden on SL Dark Fiber, to the extent possible, to maximize the likelihood of the fiber enterprise being successful;
- Secure some additional dark fiber for City use; and
- Establish fair procedures for the long-term maintenance of the system.

Staff has been working cooperatively with OSIssoft to date to leverage the system's potential as a business development tool. Specifically, staff has provided information regarding current businesses that might benefit from a connection to the loop and made introductions as requested. Additionally, staff has identified potential opportunity sites and will work with OSIssoft in the future to market these sites.

### **Analysis**

The terms of the proposed license agreement were negotiated with the goals of protecting City interests while also laying the groundwork for a successful fiber enterprise. The system itself is not expected to be a substantial revenue generator for the City, but may be an economic engine that will benefit the city from increased development and employment.

The following provides an overview and assessment of some of the key terms in the Agreement.

**Term** - The initial term is for twenty years, and SL Dark Fiber has the right to renew for four additional five-year terms. Each extension can be exercised as early as 15 years, and no later than 180 days, prior to its commencement.

*Analysis:* A long-term agreement is crucial to the success of the fiber system because users will need to make a substantial capital investment to connect to the loop.

**License Fee** - For the first ten years, the fee will be \$1.00 annually. For years 11-20, the fee will be set at market rate unless SL Dark Fiber can demonstrate that it has not yet achieved profitability. Beginning in year 20, the fee will be set a market rate. Market rate is to be determined by mutual consent based on a review of recently negotiated commercial conduit license agreements. The Agreement has a provision for arbitration should the parties be unable to agree on a market rate. Once established, the market rate will be adjusted annually for inflation.

*Analysis:* Given the substantial upfront investment required by SL Dark Fiber to install the loop and initiate the system, the project is unlikely to generate substantial profits in the near-term. The use of a "market rate" license fee will enable the City to collect license fee revenue should the system become profitable.

**City Approval of Sale, Right of First Refusal, and Abandonment** - If SL Dark Fiber wishes to sell the system, the City will have right of first refusal to purchase it. If the City does not exercise its right of first refusal, the system can be sold to another party with the City's written consent, which cannot be unreasonably withheld. If SL Dark Fiber abandons the system, the City will take ownership at no cost.

*Analysis:* These conditions give the City the opportunity to maintain control of the system should SL Dark Fiber become insolvent or decide to sell. Although the City might not necessarily have the resources to acquire and manage the system, the City would have the

opportunity to select a partner and take over operations. If SL Dark Fiber abandons the system, the City will take ownership.

**Dedication of Fiber Strands for City Use** - The license requires SL Dark Fiber to dedicate 30 strands, or roughly 10 percent of the new fiber system, to the City for its unrestricted use.

*Analysis:* This contribution will be useful to the City for municipal operations (networking, traffic signals, etc.) and potentially for partnering with other entities such as service providers or the schools. The dedicated fibers might also be used as a backbone for a municipal wireless system although additional investment would be required to make such a system operational. Although connection costs could be substantial, this dedication provides the City significant additional fiber optic capacity.

**Project Costs** - SL Dark Fiber has the sole responsibility for all project costs, including all design, development, and construction costs. The City will be responsible for its staff, attorney and consultant time and to conduct any studies including any environmental, marketing, financial feasibility, and design studies it deems necessary to assist with the analysis of the project.

*Analysis:* The City has invested staff and resources to support the project while ensuring that financial risk to the City is minimized.

**Maintenance** - SL Dark Fiber shall have sole responsibility for the installation, operation, maintenance, security, replacement and repair of the SL Dark Fiber network. When damage is caused by a third party, the City and SL Dark Fiber will share the costs of repair and reimbursement proportionally.

*Analysis:* These conditions ensure that SL Dark Fiber funds all costs associated with maintenance of its system and repair of any damage caused as a result of the installation and operation of their system. The City will oversee the maintenance and repair of the system as it has an interest in maintaining control over City conduit space which also contains existing City fiber used for communications and traffic signals.

**As-Is Conveyance** - The City grants the license to SL Dark Fiber for the property in its "as-is" condition, and SL Dark Fiber acknowledges that the City makes no representations or warranties to SL Dark Fiber with regard to the condition of the Property or the fitness or suitability thereof for SL Dark Fiber's purposes.

*Analysis:* SL Dark Fiber is presently undertaking an analysis to determine if sufficient capacity exists within all portions of the City conduit. Where adequate capacity does not exist, the City will work with SL Dark Fiber to the extent possible to identify alternatives.

**Project Schedule** - SL Dark Fiber has submitted a construction schedule that assumes the fiber loop installation will take slightly less than three months.

*Analysis:* The City's consultant believes this schedule is reasonable, assuming no unforeseen hurdles. If issues do arise, a longer construction schedule would not cause any significant negative impacts for the City.

**Current Agency Policies**

The San Leandro Redevelopment Agency 2010-14 Implementation Plan listed the following as a priority project for all redevelopment project areas:

“Facilitate technology infrastructure enhancements, including but not limited to high-speed internet services, to underserved business districts in order to support business operations and to attract new business to the City.”

**Previous Actions**

On June 6, 2011 the City Council approved an Exclusive Negotiating Rights Agreement with OSISOFT, Inc. for the purpose of negotiating a license agreement.

**Committee Review and Actions**

An update on the status of the license Agreement negotiations was provided to the Business and Housing Development Committee on September 8, 2011.

**Permits and/or Variances Granted**

In the License Agreement, the City agrees to assist SL Dark Fiber in obtaining any necessary permits or entitlements from the City (including but not limited to encroachment permits and environmental review).

**Summary of Public Outreach Efforts**

Business Development staff held two public workshops to provide a project update and solicit business community feedback on broadband needs on July 19, 2011 and July 26, 2011. The SL Dark Fiber proposal was presented and discussed at both meetings.

**Fiscal Impacts**

The City is responsible for its own staff and consulting expenses related to the project. The City Council approved a Consulting Services Agreement with Tellus Venture Associates in June 2011 for a not-to-exceed cost of \$45,000. Although that contract is primarily focused on development of a citywide Broadband Strategy, one task was for assistance negotiating the License Agreement. The Consulting Services Agreement is funded by the Redevelopment Agency (964-82-001-5120).

No additional funding appropriation is expected for this project.

**PREPARED BY:** Jeff Kay, Business Development Analyst, Community Development Department  
Cynthia Battenberg, Business Development Manager, Community Development Department



# City of San Leandro

Meeting Date: October 17, 2011

## Resolution - Council

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**File Number:** 11-244

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**TO:** City Council

**FROM:** Lianne Marshall  
Interim City Manager/Executive Director

**BY:** Luke Sims  
Community Development Director

**FINANCE REVIEW:** Not Applicable

**TITLE:** Resolution Approving a License Agreement with San Leandro Dark Fiber  
for the Installation of Fiber Optic Facilities in City Conduit

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WHEREAS, an agreement between the City of San Leandro and San Leandro Dark Fiber, a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager has recommended approval of said agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said agreement is hereby approved and execution thereof is hereby authorized.