

Town of Georgetown, Indiana

ORDINANCE G-10- 04

ORDINANCE APPROVING SALE OF NON-SURPLUS PROPERTY, BROADBAND EQUIPMENT PURSUANT TO IC 8-1.5-2-5(b) AND LEASE OF TOWER RIGHTS UNDER IC 36-1-11-12

WHEREAS, the Town Council of the Town of Georgetown, Indiana (hereinafter this "Town Council") is the legislative body of the Town of Georgetown, County of Floyd, State of Indiana (the "Town"); and,

WHEREAS, the Indiana Code provides for the disposal of non-surplus utility property pursuant to IND. CODE 8-1.5-2-4 et seq.; and

WHEREAS, the Town of Georgetown has previously adopted its Resolution to Sell Non-Surplus Property, Broadband Equipment R-09-14 and its Resolution Approving Hearing for Sale of Non-Surplus Property, Broadband Equipment R-09-17; and

WHEREAS, the Town Council after duly published notice held a public hearing concerning such sale the 26th day of October 2009 at 6:30PM at 1116 Copperfield Dr., Georgetown, Indiana 47122, which hearing date was not more than forty-five (45) days, from the receipt of the above the written appraisal concerning such sale; and

WHEREAS, the publication of such hearing occurred on the 9th day of September 2009 in the New Albany Tribune, and that more than thirty (30) days passed between the date of such notice and such public hearing, without any petition being filed before the Town Council as provided in IC 8-1.5-2-5(f)(2); and

WHEREAS, after holding such public hearing, the Town Council now desires to adopt an ordinance pursuant to IC 8-1.5-2-5(d) for the sale of the non-surplus broadband equipment and to determine the methods used for such sale.

NOW, THEREFORE, BE IT ORDAINED BY THIS TOWN COUNCIL OF THE TOWN OF GEORGETOWN, INDIANA, AS FOLLOWS:

SECTION 1: The Town shall sell the property set forth in Schedule "A" attached hereto, being all the right title and interests associated with the Broadband Utility.

SECTION 2: The Director of Public Utilities shall cause to be published a public notice pursuant to IC 5-3-1, stating that the Town will accept Letters of Interest (LOI) to enter into negotiations for the purchase of broadband equipment, which can be accompanied by

the lease of open tower rights. The Director of Public Utilities, in addition to publication of the notice, the Director of Public Utilities may also directly LOI from known providers of broadband services.

SECTION 3: The Town shall accept LOI for a period of thirty (30) days following publication requesting LOI, which, when received by the Town, shall serve as an invitation to enter into negotiations with the perspective purchaser.

SECTION 4: Negotiations shall be carried on for the sale of broadband equipment between the Town and the prospective purchaser/lessee.

SECTION 5: The sale of broadband equipment by the town shall be for \$92,000.00 outright, however other rights and obligations upon Georgetown's Broadband Utility exist, set forth more particularly in Schedule "B." The sublease of tower rights currently leased by the Town from private persons in Harrison County, Indiana, shall be subject to current lease agreements and such terms as are acceptable to the current lessors and the Town.

SECTION 6. Prospective purchasers of the Town's broadband equipment may also enter into lease agreements, set forth more particularly in Schedule "C" for real property with the Town. The Town currently maintains towers for broadband, which the Town wishes to lease to a perspective purchaser of the Broadband equipment

A. The leases for tower rights and open tower rights shall be conducted pursuant to Ind. Code 36-1-11-12. This shall serve as the disposing agents written determination that the use of the procedure set forth in Ind. Code 36-1-11-10 is not feasible, and the disposing agent further authorizes the use of the alternate procedure of Ind. Code 36-1-11-12. Disposing Agent's reasons for this determination are as follows:

(i) The leases of land contemplated are for tower rights associated with the broadband utility. The equipment of the broadband utility are offered in connection with these lease rights as they function together based on the nature of the services provided.

(ii) The lease of these tower rights to a separate purchaser of the broadband equipment would be not allow the continued service of broadband to residents in an efficient and cost effective manner.

(iii) This lease of tower sites, is meant to be a part of a larger disposition of property by the town. All property relates to broadband equipment and it is hereby determined that the sale of such equipment separately from the leases would yield the equipment less valuable.

B. The rights to leased property shall include the right to operate existing broadcast towers upon the leased premises as well as erect and operate desired broadcast

towers upon the leased premises, subject to applicable local, state and federal laws and regulations and the terms of any lease.

SECTION 7. Upon successful negotiation of terms and agreements of the purchase of the broadband equipment and leases of real property for tower rights, the successful purchaser shall be awarded the sale of broadband equipment and the lease of property for tower rights. The determination of the successful bidder shall be based upon the following criteria:

- A. Payment of a minimum of \$92,000.00, the appraised value of the broadband equipment.
- B. Lease of tower rights is not mandatory for the purchase of broadband equipment, however, if lease of tower rights is negotiated for, terms must be suitable to the Town, and any affected third parties.
- C. The ability of Town to terminate any liabilities and obligations not assumed by purchaser/lessee.
- D. The ability of perspective purchaser/lessee to obtain all necessary permits and licenses to provide broadband services to existing customers.
- E. Prospective purchasers/lessees shall give all required notices and comply with all aspects of Indiana law, including IC 8-1-32.5-10 through 12, affecting transfers and leases contemplated by this ordinance.
- F. All prospective purchasers/lessees must provide evidence that the transferee is a communications service provider to which a certificate of territorial authority may be lawfully issued.
- G. Any LOI from a trust (as defined in IC 30-4-1-1(a)) must identify each beneficiary and settler empowered to revoke or modify the trust.

SECTION 8: No LOI shall be considered unless documents required for Section F. & G. are supplied with the LOI.

SECTION 9: Should more than one prospective purchaser/lessee meet all of the above criteria, the Town shall award the sale/lease to the party who offers the highest amount of money for the broadband equipment whether that party has negotiated for simultaneous lease rights or not.

SECTION 10: The perspective purchaser/lessee chosen by the Town shall have thirty (30) days after being notified by the Town that they are the successful purchaser/lessee in which to pay the full amount of the agreed upon consideration.

So ORDAINED by the Town Council this _____ day of _____ 2010.

YEA

NAY

[Handwritten signature]

Wipe Mills

Tom Stine

Paul ...

ATTEST:

Douglas Cook

 Douglas Cook, Georgetown Clerk/Treasurer

EXHIBIT "A"

EQUIPMENT

900mhz SM:(Discernity)

140 900mhz SM at start
77 900mhz SM in use
55 900mhz SM in stock
132 Total

8 *Missing 900mhz SM*

900mhz Antennas:(T/D)

25 at start (Discernity)
77 in use
42 in stock
139 Total
114 Purchased by Town

5700mhz SM:(Town)

13 Purchased by Town
1 in use

5700mhz AP:(Town)

2 Purchased by Town
1 in use

DSS Mounts:(T/D)

77 in use
43 in stock
120 Total

Power Adapters(T/D)

80 in use
25 in stock
105 Total

also: 3 Backhaul pairs BH20
1 CMM w/GPS
3 900mhz AP w/omni antennas
All equipment is Canopy Advantage

EXHIBIT "B"

BROADBAND UTILITY OBLIGATIONS

- 1) Customer Agreements
- 3) Sublease of the Kendal tower lease subject to consent of lessor under terms satisfactory to the Town.

SCHEDULE "C"

TOWER LEASES AVAILABLE FOR PROPERTY OWNED BY THE TOWN

- 1) Lease of Property with 125' Wireless Broadband Towers
- 2) Lease of Water Tower Antenna
- 3) Lease of 40' Antenna
- 4) Other property leases for open tower locations, needed to effectuate transfer.