Message from the City Administrator

To: Leawood Citizens
Date: November 18, 2014
RE: City of Leawood’s Response to Google’s Unilateral Action to Cancel Network Services Agreement

Summary Statement

On September 23, 2013, the City of Leawood and Google formally entered into a network services agreement. One of the terms of the agreement was for Google to abide by the City’s right-of-way ordinance as required of all other communication companies operating in Leawood. Google unilaterally terminated the network services agreement on September 22, 2014. The City has a right-of-way ordinance requiring utility companies to place their facilities underground. The ordinance does not apply to utility easements outside of the public right-of-way. Placement of lines overhead when other providers have placed lines underground is unacceptable to the City because it violates the nondiscrimination provision in the City’s right-of-way ordinance. The City hopes Google will reconsider its recent action to terminate the agreement and engage the City to reinstate the previously agreed upon network services agreement and bring its fiber system to the residents of Leawood.

Full Statement

Over the past several weeks there have been news reports regarding Google’s unilateral decision to terminate its network service agreement with the City of Leawood effective September 22, 2014. The City of Leawood is constrained by what it can publicly state to its citizens due to the confidentiality clause in the network service agreement required by Google. Under the terms of the agreement, the provision remains in effect until September 22, 2016. This message is intended to reveal as much information as possible based upon the public record while remaining in compliance with the confidentiality clause.

The City of Leawood contacted Google Fiber in April of 2013 to request a meeting with the Mayor and select City staff to discuss the possibility of Google bringing their high speed fiber network to Leawood residents (letter on file). Prior to any discussions taking place, Google required that all of the City participants execute nondisclosure agreements. The nondisclosure agreements were signed and
numerous meetings were held to discuss matters publicly available, such as City policies, ordinances, planning procedures and the City's permitting procedures.

On August 19, 2013, the City's Governing Body approved a network services agreement with Google. The network services agreement was formally executed by Google on September 23, 2013. However, Google made no commitment for a timeline regarding a build-out plan of its network in Leawood.

The City and Google commenced a series of meetings resulting in recommendations for location of a Google "fiber hut" on City-owned property. On December 24, 2013, Google submitted applications for the fiber hut, preliminary plan, final plan and special use permit. City staff supported the applications and they were submitted to the City’s Planning Commission on January 28, 2014. The Planning Commission concurred and recommended all four be approved by the Governing Body. On March 3, 2014, all plans and a licensing agreement allowing Google’s use of City-owned property were approved by the Governing Body.

On July 24, 2014, City Administrator Scott Lambers received a letter from Kevin Lo of Google Fiber informing him that Google was terminating the network services agreement entered into between Google Fiber and the City of Leawood and that the termination would become effective 60 days later, per the terms of the agreement, on September 22, 2014.

As publicly reported in a November 4, 2014 Kansas City Star article, Google has stated, “that easy access to utility poles and underground cable conduit are key to its keeping its costs down.” The article further stated that Google has made clear that “it will only build its network in cities that clear away the usual regulatory barriers on construction projects.”

The City’s right-of-way ordinance provision requiring utility companies place their facilities underground was approved in 1999 and a similar provision was included in the Leawood Development Ordinance provision in 2003. The City’s right-of-way ordinance governs use of the right-of-way. The right-of-way is generally the public street and the area directly adjacent to the public street. The City will not discriminate in its application of its ordinances. The City expects all providers to comply with its ordinances and other communication providers, such as AT&T and Time Warner, have done so.

As publicly noted by Google in its termination letter, the City and Google discussed allowing an exception to the ordinance in certain situations. The City Administrator was and remains supportive of such an exception permitting a provider such as Google to use overhead poles where other communications providers are already attached on poles. An exception was not necessary for poles located in utility easements, typically found in residential back yards and located extensively in the northern part of the City, as those are not covered by the right-of-way ordinance.

The City is unaware of Google encountering any extraordinary costs due to the City’s ordinances as other communication providers have incurred similar construction costs in complying with City ordinances.
On September 22, 2014, the network service agreement was officially terminated.

On October 30, 2014, Google notified certain Leawood residents via e-mail that it would not be bringing Google Fiber to Leawood.

While the unilateral decision by Google is unfortunate, the integrity of the equitable application of the City of Leawood ordinances must take precedence over all other considerations. This ensures that a fair commercial environment is provided for the residents and businesses of Leawood, especially when it involves the regulation of a highly competitive private-sector marketplace with numerous companies vying for the same customers.

It is the hope of the Governing Body that Google will find a way to accept Leawood's position on maintaining a level playing field and engage the City to reinstate the previously agreed upon network services agreement and bring its fiber system to the residents of Leawood.