

# Agenda Report

TO: CITY COUNCIL

DATE: March 12, 2007

FROM: CITY MANAGER

SUBJECT: AUTHORIZE THE CITY MANAGER TO EXECUTE THE PURCHASE AND SALE AGREEMENT WITH CHAMPION BROADBAND, LLC, FOR THE SALE AND TRANSFER OF TITLE TO UNDERGROUND CONDUIT IN UNDERGROUND UTILITY DISTRICT 96-1, AVENUE 64 AND LA LOMA ROAD.

## **RECOMMENDATION**

It is recommended that the City Council accept the offer of \$168,557 submitted by Champion Broadband for the purchase and transfer of title for one two-inch underground conduit within the district boundary of Underground Utility District 96-1 and authorize the City Manager to execute the agreement.

## **BACKGROUND**

On December 9, 1996, the City Council approved the establishment of Underground Utility District 96-1, Avenue 64 and La Loma Road. The affected utilities in this project included Pasadena Water and Power Department, AT&T (Formerly SBC), Charter Communications and Altrio Communications. All utilities agreed to enter into a joint trench sharing in the space and cost of the trench.

On November 17, 2003, the project was awarded to Henkels & McCoy, Inc. based on the lowest bid submitted. All utilities were responsible for the execution of separate contracts with Henkels & McCoy. After the contract award, Altrio Communications opted to not participate in this project due to the lack of financial resources. The total construction cost for Altrio facilities was \$585,574. In response to Altrio's decision not to participate, a number of options were considered by the City to resolve the construction delay of the project.

On May 24, 2004, staff recommended authorization to increase the contract amount to provide the temporary underwriting cost to underground overhead facilities owned by Altrio. This recommendation was contingent upon Champion Broadband's agreement to obtain Altrio rights to the Franchise Agreement along with other additional obligations to the City to include reimbursement for the cost to underground Altrio's overhead facilities.

As of January 2007, the completion of primary cable installation in Utility District 96-1 is delayed. Currently, Champion is maintaining services to three affected properties within the district; however, has opted to discontinue serving these properties. As a result, based on the current needs of Champion to maintain services outside the district boundary, they have requested to install 2,600 linear feet of fiber on Avenue 64 starting at the South City Limits to Malcolm Drive.

City staff recommends that the City Council approve the offer submitted by Champion to purchase one two-inch PVC conduit. Approval of Champion's request would allow for the following:

- Completion of cable installation;
- Connection of affected properties to the underground conduit system;
- Removal of overhead wires and poles;
- Maintain projected schedule of the street improvement project; and
- Allow for a 28% reimbursement of the initial loan made to Altrio.

Champion has agreed to pay the sum of \$168,557 for the purchase of one two-inch PVC conduit. The City will own the remaining two conduits. In the future, if Champion or any other utility requires additional conduit, the City, at its discretion may sell and transfer title for additional conduits at the same cost to Champion through the execution of a new purchase agreement.

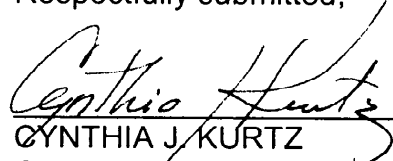
Payment shall be made in two installments with a down payment of \$125,000 payable on or before March 30, 2007. The remaining balance of \$43,557 shall be paid on or before December 14, 2007.

As part of the terms and conditions of the agreement, upon receipt of down payment, Champion will gain immediate access to the conduit and must complete the installation of cable no later than March 31, 2007 or within thirty days after the approval and execution of the agreement. A copy of the Purchase and Sale Agreement is attached and marked as "Exhibit A".

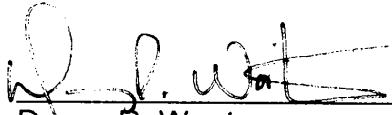
**FISCAL IMPACT**

The City's total underwriting cost of construction for the installation of underground conduits for Altrio Communications was \$585,574. Champion's cost for the purchase of one two-inch PVC conduit is \$168,557. This reimbursement will be deposited in the Underground Surtax Fund.

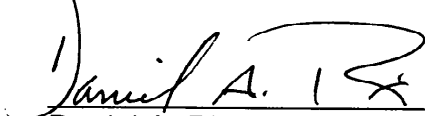
Respectfully submitted,

  
CYNTHIA J. KURTZ  
City Manager


Prepared by:

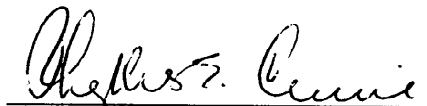
  
Danny R. Wooten  
Management Analyst IV  
Department of Public Works

Reviewed by:

  
Daniel A. Rix  
City Engineer

Approved by:

  
Martin Pastucha  
Director  
Department of Public Works

  
Phyllis E. Currie  
General Manager  
Water and Power Department

# EXHIBIT "A"

PURCHASE AND SALE AGREEMENT NO. \_\_\_\_\_

**THIS AGREEMENT** is made and entered into this 10<sup>th</sup> day of January, 2007, by and between the City of Pasadena, 117 E. Colorado Boulevard, Ste. 430, Pasadena, California 91102, ("City") and Champion Broadband California, a Colorado Limited Liability Company, 380 Perry Street, Ste. 230, Castle Rock, Colorado 80104, ("Buyer").

**WHEREAS**, Buyer wishes to obtain rights to pay and participate in Underground Utility District 96-1, Avenue 64 and La Loma Road from Colorado Boulevard to the South City Limits (Project). Buyer desires to install fiber cable for cable television service.

**IN CONSIDERATION** of the sum of One Hundred Sixty Eight Thousand, Five Hundred Fifty Seven (\$168,557), the City hereby transfers title to Buyer of the following: One two-inch underground conduit within the district boundary of Underground Utility District 96-1, Avenue 64 and La Loma Road from Colorado Boulevard to South City Limits ("Conduit"). Attached hereto, marked "Exhibit A", and hereby incorporated as a part of this Agreement, a series of maps (Pasadena Power Department Drawing Numbers 2-2-1542; 2-2-1543; 2-2-1544; 2-2-1545; and 2-2-1546, sheets 14 of 14) delineating conduit location and boundaries of said district.

## **PAYMENTS AND SCHEDULE**

Buyer shall pay on or before January 12, 2007 a down payment in the amount of One Hundred Twenty Five Thousand Dollars (\$125,000). The balance of the purchase price in the amount of Forty-Three Thousand Five Hundred Fifty-Seven Dollars (\$43,557) shall be paid on or before December 14, 2007. All payments shall be made by check payable to City of Pasadena.

## **TERMS AND CONDITIONS:**

1. Buyer understands and agrees that the transfer of title to the Conduit pursuant this Agreement shall not occur until City receives down payment. Upon such down payment, Buyer will have the right to immediate access to the conduit to install fiber cables and underground lateral connections to existing customers. Buyer shall use commercially reasonable best efforts to complete all such installation no later than March 31, 2007.
2. Buyer acknowledges that City will own all remaining conduit. If Buyer requires additional conduit, City may, but is not obligated to, transfer title to additional conduit to Buyer, if then available through the execution of a new purchase agreement.
3. Buyer acknowledges and agrees that all risk of loss or damage, whether direct or consequential, arising from installation, operation or maintenance of the Conduit, regardless of the cause, shall be the responsibility of the Buyer, and City shall have no responsibility therefore, once title passes to Buyer.
4. City warrants that the Conduit is free from any security interests, liens or encumbrances, and that the City has the legal right to transfer title of the Conduit to Buyer.

5. This Agreement is governed by the laws of the State of California. Suit hereon may only be brought in Los Angeles County, California and in no other venue. The prevailing party in such litigation shall have right to recover from the other party all attorney fees and costs of suit.

**IN WITNESS WHEREOF**, the parties duly authorized representatives represent by their signatures below that they have read and agree with the terms and conditions of this Agreement and have signed this Agreement on the date set forth below.

DATED: **CITY OF PASADENA**

By: \_\_\_\_\_  
CYNTHIA J. KURTZ  
City Manager

DATED: **CHAMPION BROADBAND CALIFORNIA, LLC**

By:  \_\_\_\_\_  
MARK HAVERKATE  
CEO

APPROVED AS TO FORM:

\_\_\_\_\_  
SCOTT D. RASMUSSEN  
Assistant City Attorney  
On behalf of City

**Disclosure Pursuant to the  
City of Pasadena Taxpayer Protection Amendment of 2000  
Pasadena City Charter, Article XVII**

Contractor/Organization hereby discloses its trustees, directors, partners, officers, and those with more than a 10% equity, participation, or revenue interest in Contractor/Organization, as follows:

*(If printing, please print legibly. Use additional sheets as necessary.)*

**1. Contractor/Organization Name:**

CHAMPION BROAD BAND CALIFORNIA, LLC

**2. Name(s) of trustees, directors, partners, officers of Contractor/Organization:**

MARK HAVERKATE
DAVID HAVERKATE
JEFF DECKER
NANCY STINSON

**3. Names of those with more than a 10% equity, participation or revenue interest in Contractor/Organization: (MUST NOT BE LEFT BLANK, IF NONE, WRITE NONE)**

MARK HAVERKATE
DAVID HAVERKATE

Prepared by: MARK HAVERKATE  
Title: CEO  
Date: 3/6/07

For office use only:  
Contract/Transaction No. \_\_\_\_\_  
If not a contract, type of transaction: \_\_\_\_\_