

**CITY OF CENTENNIAL  
COLORADO**

**RESOLUTION NO. 2016-R-80**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
CENTENNIAL, COLORADO CREATING A CITY-OWNED BUSINESS  
OPERATION TO BE KNOWN AS CENTENNIAL FIBERWORKS,  
CREATING THE CENTENNIAL FIBER COMMISSION, AND  
PROVIDING FOR THE LIMITED DELEGATION OF AUTHORITY TO  
THE CENTENNIAL FIBER COMMISSION FOR THE DAY-TO-DAY  
OPERATION AND MAINTENANCE OF CENTENNIAL FIBERWORKS**

WHEREAS, the City of Centennial is a Home Rule municipality authorized to legislate and administer laws, programs, and policies of a local nature and local concern; and

WHEREAS, Article 27 of Title 29 of the Colorado Revised Statutes titled "*Competition in Utility and Entertainment Services*" prohibits every Colorado municipality from offering, directly or indirectly, cable television service, telecommunication service, and high speed internet access, otherwise known as "advanced service," to residents and businesses *unless* the municipality obtained voter approval to supersede the state law prohibition; and

WHEREAS, Article 27 of Title 29 of the Colorado Revised Statutes does not prohibit any municipality from planning, constructing, or installing fiber optic infrastructure within public rights of way; and

WHEREAS, at the general election of November of 2013, the City of Centennial secured voter approval to supersede the state statutory restrictions imposed by Article 27 of Title 29 of the Colorado Revised Statutes on the municipal provision of broadband infrastructure and services to residents and businesses; and

WHEREAS, the voters' approval to supersede the state statutory restrictions imposed by Article 27 of Title 29 of the Colorado Revised Statutes authorized the City to indirectly provide cable television service, telecommunication service, and high speed internet access to citizens and businesses and to enter into partnerships with others in the direct provision of one or more of such services; and

WHEREAS, the City Council of the City of Centennial created a Fiber Steering Subcommittee comprised of City Councilmembers with the assistance of professional staff; and

WHEREAS, the Fiber Steering Subcommittee was commissioned to evaluate the potential costs and benefits of extending a backbone of fiber optic infrastructure capable of potential use by the City for municipal and public safety purposes and for potential extension to and use by residents, businesses, and public institutions; and

WHEREAS, the Fiber Steering Subcommittee concluded, based on experienced

professional advice and counsel, that significant benefits could be derived by the construction of a fiber optic backbone network located within designated rights of ways of the City which benefits would include, but not be limited to:

- Use of the fiber based backbone by the private sector in partnership or agreement with the City to improve local telecommunication services;
- Use of the fiber based backbone to serve the City's municipal communication and data transfer needs, operate public safety applications, and extend such services to other local agencies serving the public interest;
- Use of the fiber based backbone to advance the City's long-term economic development goals, retention of existing business, and recruitment of businesses that require efficient and advanced communication technologies; and
- Expansion of the municipally-owned fiber based backbone to potentially support fiber-to-the premise (FTTP).

WHEREAS, the City Council for the City of Centennial established policy goals and adopted a master plan which direct the extension of a backbone of fiber optic infrastructure within public rights of way; and

WHEREAS, publicly constructed fiber optic infrastructure can be used to support communications and data transfer associated with public safety, public works, and other municipal purposes as well as cable television service, telecommunication service, and high speed internet access to businesses, institutions and residents; and

WHEREAS, the City of Centennial commenced the planning, contracting, and construction of a fiber optic network backbone located within major rights of way of the City; and

WHEREAS, the Fiber Steering Subcommittee advised the City Council that the planning, construction, operation, and day-to-day management of a City-wide fiber optic network backbone will necessitate substantial commitment of time and expertise and that the decision making processes associated with planning, construction, operation, and management of the backbone will likely require greater involvement and commitment than is typically available from the City Council during its regular meetings held each month; and

WHEREAS, state law recognizes that municipalities are authorized to create, operate, and manage utility systems providing utilities to its residents and businesses; and

WHEREAS, planning, construction, operation, and management of a fiber optic infrastructure, and the variety of services that may be provided through such infrastructure, including internet access and high speed data transfer, are substantially similar to electric, gas, and water utility systems in that the services capable of delivery through fiber optic infrastructure have become or are fast becoming a necessary and increasingly important component of everyday life; and

WHEREAS, state law recognizes that municipalities are authorized to plan for, design, construct, operate, and manage streets and transportation systems to provide services to residents and businesses; and

WHEREAS, fiber optic infrastructure, and the methods and manner of extending such infrastructure to citizens and businesses is substantially identical to the municipal planning, construction, operation, and maintenance of streets and transportation systems; and

WHEREAS, there is no prohibition contained in state law that would prevent or preclude a municipality, and in particular a home rule municipality, from creating a fiber optic infrastructure system capable of delivering services to residents and businesses; and

WHEREAS, the City Council for the City of Centennial desires to facilitate the efficient and cost effective planning, construction, operation, and management of the City's fiber optic infrastructure by the creation of a City-owned department or business operation with powers delegated by the City Council to manage and operate the City's continuing construction, use, and extension of the City's fiber optic infrastructure.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CENTENNIAL, COLORADO AS FOLLOWS:**

**Section 1.**     **Creation of Centennial FiberWorks.** The City Council hereby creates a publicly-owned business operation for the management and operation of the City's fiber optic infrastructure and for the management and operation of the City's municipal and public interests in the continuing construction, use, maintenance, and extension of the fiber optic infrastructure. Such business operation shall be known as Centennial FiberWorks. Centennial FiberWorks shall be a department of the City of Centennial.

**Section 2.**     **Scope of General Responsibility and Authority.** Centennial FiberWorks shall be generally authorized to conduct its affairs in accordance with this Resolution and state and local laws, provided that the actions of Centennial FiberWorks advance the planning, construction, operation, and management of the City's fiber optic infrastructure.

**Section 3.**     **Centennial Fiber Commission.** The interests of Centennial FiberWorks shall be governed by a board of directors to be known as the Centennial Fiber Commission ("Commission").

- A. **Commission Membership.** The initial members of the Commission shall be comprised of three (3) members of the City Council.<sup>a</sup> The City Council shall increase membership of the Commission by the addition of two (2) members who are residents of the City of Centennial to be appointed to the Commission within eight (8) months of the effective date of this Resolution. The City Council may appoint non-voting advisory members with experience in construction, operation, or management of fiber

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<sup>a</sup> Pursuant to Section 2.5 of the Centennial Home Rule Charter, the Mayor is a member of the City Council.

optic systems to the Commission upon recommendation of the Commission.

B. Appointment of Commission Members. The City Council shall select members of the Commission by majority vote of a quorum present and voting. Appointment to the Commission shall require separate or individual consideration and vote for each candidate and appointment shall not be made by approving multiple candidates in a single motion or resolution.

- a. City Council as Members of the Commission. The City Council shall use its best efforts to appoint Council Members to Council vacancies on the Commission on an annual basis prior to the end of each calendar year. The City Council's selection of the members shall be made from City Council nominations. For appointment of members of the City Council to the Commission, the City Council Member nominated for the Commission shall not be counted for purposes of determining a quorum and the nominated Council Member shall not be entitled to vote on the question of the Council Member's Commission appointment.
- b. Citizen (Non-Council) Members of the Commission. The City Council shall appoint citizen members (non-Council Members) whether voting or non-voting advisory appointees to the Commission within a reasonable time following expiration of the non-Council Member's term. The process for appointment of shall be at the discretion of the City Council and such process shall not require conformance with Article 4, Chapter 2 of the Centennial Municipal Code.

C. Term of Commission Members.

- a. Council Member Appointees. At the inception of the Commission and to maintain staggered terms, the City Council shall appoint Council Members to the following initial terms:
  - One Council Member appointee shall be appointed to a 1 year term commencing on January 23, 2017 and terminating on December 31, 2017;
  - One Council Member appointee shall be appointed to a 2 year term commencing on January 23, 2017 and terminating on December 31, 2018;
  - One Council Member appointee shall be appointed to a 3 year term commencing on January 23, 2017 and terminating on December 31, 2019.

Following such initial appointments, all Council Members appointed to the Commission shall serve a three (3) year term commencing on the January 1 following expiration of the prior term. No Council Member may serve on the

Commission for more than a total of six (6) consecutive years

- b. **Other Appointees.** Appointees to the Commission other than Council Members shall serve for a term of two (2) years provided, however, that the City Council may assign an appointee a term of less than three (3) years in order to stagger terms with other appointees to help ensure Commission continuity. No appointees to the Commission shall serve on the Commission for more than a total of eight (8) consecutive years.
- D. **Resignation.** A member of the Commission may resign at any time by written notice to the Mayor or the City Manager. Notwithstanding any declaration or statement in a notice of resignation to the contrary, resignations shall be deemed unconditional and effective immediately upon the Mayor's or the City Manager's receipt of the notice and a resignation shall not require acceptance by the City Council.
- E. **Loss of Office.** A member of the City Council serving as an appointed Commission member shall cease to be qualified for the Commission and shall be deemed removed from the Commission without further action by the City Council immediately upon the member's loss of office as a City Council Member.
- F. **Loss of Residency.** A resident of the City of Centennial appointed to the Commission pursuant to Section 3(B)(2) above shall cease to be qualified for the Commission and shall be deemed removed from the Commission without further action by the City Council immediately upon the member's loss of residency within the City of Centennial.
- G. **Removal from the Commission.** Any member of the Commission may be removed from the Commission by a majority vote of a quorum present of the City Council at any time and for any or no reason or justification. A City Council member appointed to the Commission who is the subject of removal shall not vote on the question of his or her removal. Notwithstanding that removal of a Commission member requires no reason or justification, the City Council may remove a City Council Member serving on the Commission for the purpose of enabling other City Council Members to gain experience in the day-to-day operation of Centennial FiberWorks or to more equitably allocate duties and responsibilities among members of the City Council.
- H. **Vacancy.** A vacancy on the Commission shall be created in the event of resignation, loss of office, loss of residency, or removal as provided by Section 3(D), (E), (F) or (G). A vacancy on the Commission shall be filled as promptly as possible after the vacancy occurs in accordance with the following procedures:
  - a. A vacancy in a Commission membership previously held by a Council Member shall only be filled by another Council Member selected in accordance with Section 3(B). The term of an appointment to a vacancy shall only be for the remaining portion of the vacated term.

- b. A vacancy in a Commission membership previously held by a person not a member of the City Council shall be filled at the discretion of the City Council for a term determined by the City Council not to exceed three (3) years. In establishing the term when filling a vacancy, the City Council shall consider setting the length of the term to maintain staggered terms among other Commission members.
- I. Processes and Procedures of the Commission. The Commission shall promulgate bylaws, department policies, and rules of order and procedure to govern the actions of the Commission. The City Council may alter, amend, or reject any bylaws, policies, rules of order and procedures promulgated by the Commission. At a minimum, such bylaws, policies, and rules shall:
    - a. Require conformance with the Colorado Open Meetings Law, C.R.S. §24-6-402 et seq. so that formal meetings of the Commission are preceded with lawful notice, are open to the public, and are recorded; and
    - b. Establish a process for the election, term, and removal of a Commission chairperson. The chairperson shall be a City Council Member appointed to serve on the Commission. The chairperson shall be authorized to represent the Commission, chair meetings, and execute documents on behalf of the Commission; and
    - c. Require all formal action to be approved only upon majority vote of a quorum of the Commission members eligible to vote unless a supermajority is required by law, e.g., motion for executive session; and
    - d. Require formal action of the Commission to be memorialized by resolution or other appropriate writing which shall be maintained for public inspection pursuant to the Colorado Open Records Act, C.R.S. §24-72-204 et seq.

**Section 4. Stipend for Commission Members.** In recognition that the duties and obligations of the Commission will require a substantial commitment of time and attention, and in recognition that membership is not a duty or an obligation attendant to or associated with elected office as a Council Member, the voting members<sup>b</sup> of the Commission shall receive a monthly stipend of three hundred and fifty dollars (\$350.00), prorated for any partial month of service. Voting members may voluntarily waive the receipt of a stipend by written notice to the City Manager and City Finance Director. Non-voting advisory members serving on the Commission shall not receive a monthly stipend.

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<sup>b</sup> Voting members include the three (3) City Council Members appointed to serve on the Commission and the two (2) residents appointed to serve on the Commission.

**Section 5.**     **Commission Members Nonpartisan and Unaffiliated with Districts.** Members of the Commission shall serve in a nonpartisan capacity unaffiliated with Council districts, homeowners or business associations, or neighborhoods. It is the overriding goal of the Commission and its members to exercise the duties and obligations of Centennial FiberWorks for the benefit of the City of Centennial generally and for the benefit of the operational sustainability and best interests of Centennial FiberWorks.

**Section 6.**     **Power and Authority Delegated to Centennial Fiber Commission.** The City Council hereby delegates the following powers and duties to the Centennial Fiber Commission. In the exercise of such authority, the Centennial Fiber Commission shall not be required to obtain approvals or consent of the City Council.

- A. **General Delegation.** The Commission shall have the general authority and obligation to manage the affairs and operations of Centennial FiberWorks except as limited by Section 7 or applicable law.
- B. **Contract Authority.** Subject to prior City Council appropriation of funds for such purpose, the Commission for Centennial FiberWorks may execute contracts for goods and services deemed necessary and reasonable by Centennial FiberWorks for the purpose of planning, constructing, operating, maintaining, and managing the City of Centennial fiber optic assets and infrastructure. Prior to execution of any contract pursuant to the authority set forth above, the majority of the Commission shall formally vote to approve such contract and may delegate to the FiberWorks General Manager the authority to execute the approved contract. All contracts shall identify that the contract is entered into by Centennial FiberWorks on behalf of the City of Centennial pursuant to this Resolution.
- C. **Intergovernmental Agreements.** Centennial FiberWorks shall be authorized to enter into intergovernmental agreements where such agreement is for a term of less than six (6) months and less than \$100,000. Prior to execution of any intergovernmental agreement pursuant to the authority set forth above, the majority of the Commission shall formally vote to approve such intergovernmental agreement and may delegate to the FiberWorks General Manager the authority to execute the approved intergovernmental agreement. All intergovernmental agreements executed by Centennial FiberWorks shall identify that the intergovernmental agreement is entered into by Centennial FiberWorks on behalf of the City of Centennial pursuant to this Resolution.
- D. **Authority to Establish a Schedule of Rates and Charges for Services.** The Commission for Centennial FiberWorks may create a schedule of rates and charges for services obtained by customers or other persons or entities from the City's fiber optic infrastructure. Prior to the effective date of a schedule of rates and charges, or amendments of such schedule, the Centennial FiberWorks shall cause such schedule to be referred to the City Council for review and the City Council may ratify, reject or amend such schedule. The City Council may, at any time subsequent to ratification and approval of any rates or charges and at its discretion, alter, amend, or reject any rates or charges

proposed or established by Centennial FiberWorks.

**Section 7. Powers and Authority Reserved by the City Council.** Centennial FiberWorks and the Commission shall not be authorized to exercise the following powers which powers shall be reserved to the City Council:

- A. Legislative Power. The Commission shall not be authorized to enact ordinances or other forms of general legislation (e.g., making of laws governing the general public). Legislative measures desired by the Commission may be submitted to the City Council for Council consideration.
- B. Reservation of Specific Power. The Commission shall not be authorized to undertake any action specifically and expressly withheld or denied to the Commission by a majority of the City Council. For example, the City Council may expressly prohibit the Commission from entering into a contract with a specific vendor based on a finding that such contract may present a conflict of interest or the City Council may prohibit the Commission from taking action to extend fiber services to a specific area of the City.
- C. Creation of Debt; Issuance of Bonds. The Commission shall not be authorized to issue bonds or to incur multiple fiscal year debt within the meaning of Article X, § 20 of the Colorado Constitution, commonly known as the “Taxpayers Bill of Rights” (“TABOR”). Notwithstanding the forgoing, Centennial FiberWorks through the Commission, may enter into contracts and other financial transactions as may be authorized by this Resolution and which comply with the requirements of TABOR.
- D. Direction, Supervision, Discipline, and Termination of City Employees or City Contractors. The Commission shall be governed by Section 8.8 of the Centennial Charter which prohibits the direction, supervision, discipline, and termination of employees or contractors of the City. The Commission shall manage its duties and responsibilities through the Centennial FiberWorks General Manager.
- E. Exceed Scope of Powers Authorized by this Resolution. The Commission shall be limited to the exercise of powers authorized by this Resolution and such powers that are reasonably necessary to effectuate such powers. The City Council reserves all powers not otherwise delegated to Centennial FiberWorks.

**Section 8. Centennial FiberWorks Obligation to City Council.** Centennial FiberWorks shall endeavor to keep the City Council informed of the activities and actions of Centennial FiberWorks through regular or routine reports to the City Council to be done at a frequency of no less than one report every two (2) months.

**Section 9. Administrative Staff of the Centennial FiberWorks.** The City Manager shall make available City administrative employees, and when appropriate, City contractors to assist in the performance of the duties and responsibilities of Centennial FiberWorks. At the

inception of Centennial FiberWorks, the following City administrative staff and contractors will be designated to fulfill the following roles and positions:

- A. City Manager to Serve as FiberWorks General Manager. The City Manager shall serve as the General Manager and chief administrative officer of Centennial FiberWorks. Such designation recognizes that the City Manager holds ultimate responsibility for the hiring, termination, management, and direction of administrative staff of the City pursuant to Section 8.8 of the Centennial Home Rule Charter. The City Manager may delegate all or any portion of the Manager's role and responsibility for Centennial FiberWorks to one or more City employee(s) or contractor(s).
- B. Director of Fiber Optic Infrastructure. In consultation with the Commission, the City Manager shall appoint a Director of Fiber Optic Infrastructure with expertise in oversight and operations of a fiber network, community education and outreach on behalf of the City, engagement with private internet service providers, and serving as the stakeholder manager and internal liaison.
- C. Other Services. Other administrative services such as budget and finance, procurement, engineering, and legal services will be provided to Centennial FiberWorks as needed under the direction of the City Manager.

**Section 10.** **Applicability of Laws and Requirements.** As a department of the City of Centennial, Centennial FiberWorks shall comply with the general laws, polices, and procedures of the City of Centennial including, but not limited to, laws and policies governing procurement, budgeting and finance, open records and open meetings, and contracting.

**Section 11.** **Applicability of Ethical Policies.** The members of the Commission shall be governed by the adopted policies of the City of Centennial concerning ethics and conduct as may be applicable to board and commission members generally.

**Section 12.** **Effective Date and Reservation of Authority to Amend.** This Resolution shall take effect immediately upon its approval by the City Council. The City Council reserves all power and authority to modify, amend, or repeal this Resolution which authority shall include the power to terminate the existence and operation of Centennial FiberWorks and, in the case of such termination, to assume all authority, power, and obligations of such Centennial FiberWorks and the Commission.

**Section 13.** **Fiber Steering Subcommittee.** The actions of the City Council Fiber Steering Subcommittee are hereby accepted and ratified by the City Council. The Fiber Subcommittee, having ably served its intended purpose in commencing the work necessary to initiate and advance the City Council's vision and policies in developing a fiber optic network, is dissolved with the appreciation and gratitude of the City Council.

**Section 14.** **Reexamination of Centennial FiberWorks and Centennial Fiber**

**Commission.** The establishment of Centennial FiberWorks and Centennial Fiber Commission shall be reviewed and assessed by the City Council within one (1) year of the effective date of this Resolution.

**Section 15. Effective Date.** This Resolution shall take effect upon its approval by the City Council.

ADOPTED by a vote of 7 in favor and 2 against this 12<sup>th</sup> day of December, 2016.

By: Cathy A. Noon  
Cathy A. Noon, Mayor

ATTEST:

Approved as to Form:

By: Rubana Lettice  
City Clerk or Deputy City Clerk

By: Jim Harrison  
For City Attorney's Office