

# **AGENDA**

## **Fiber Committee Meeting**

City of Hillsdale  
2nd Floor Conference Room, City Hall  
(517) 437-6441  
August 14, 2018 - 9:00 AM

- A. MEETING CALL TO ORDER
- B. PUBLIC COMMENT ON AGENDA ITEMS
- C. CONSENT AGENDA
  - a. Approval of Fiber Committee Meeting Minutes June 26, 2018
- D. PRESENTATION BY JIM SELBY – ASPEN WIRELESS
- E. OLD BUSINESS
  - a. Resolution Approved by City Council
- F. NEW BUSINESS
  - a. RFP for Fiber to the Premises
- G. PUBLIC COMMENT
- H. MOTION TO ADJOURN

City of Hillsdale

Fiber Committee

June 26, 2018 Meeting Minutes

Present: Sue Smith, Robert Socha, David Holcomb, Barry Hill, Patrick Flannery, Jason Sherrill, Eric Macy, Steve Vear

Absent: Chris McArthur

City Staff Present: David Mackie, City Manager, Kelly LoPresto, Economic Development Coordinator

Meeting called to order at 9:04 a.m. by Mr. Mackie.

No Public Comment.

The group thinks there is a need for residential and commercial broadband.

BPU has 24 strands of fiber. BPU can buy additional fiber from Merit.

Check to see if BPU can lease or sublease (regarding the contract with ACD).

ACD gets their internet from Merit.

Merit provides infrastructure. ACD doesn't have the redundancy that Merit has.

Get a copy of the Marshall and Holland RFP on their fiber projects and email out to the committee.

The lifespan of fiber is approximately 20 years. There are on-going costs and updating.

Take a resolution to August 6, 2018 council meeting for council to approve moving forward with walking through the process.

Secure financing of \$25,000 for legal advice and guidance from the same lawyer Marshall used.

Bring back to committee RFP process.

Look for grants that might be available for fiber project.

The committee suggested to invite Jeff Gray, Jonesville City Manager to the next Fiber Committee meeting.

Meeting adjourned at 10:00 a.m.

Next meeting is Tuesday, August 14, 2018 at 9 a.m., City Hall, Third Floor Council Chambers.

**REQUEST FOR PROPOSALS  
CITY OF HILLSDALE, MICHIGAN**

**FIBER TO THE PREMISE (FTTP) PROJECT  
PROVIDING ULTRA-HIGH SPEED INTERNET SERVICE**

**1. Introduction**

**1.1 Network Background**

Pursuant to the State of Michigan PA 48 of 2002 (Metropolitan Extension Telecommunications Rights-of Way Oversight Act -- METRO Act) the City of Hillsdale (the City) is seeking qualified bids from telecommunication providers (Provider) to own, engineer, design, construct, operate and maintain an open-access FTTP system that will provide ultra-high speed internet access (within the next two (2) years) to all residences, businesses and community institutions within the Hillsdale City Limits. The network will consist of a baseline of 40 Gigabits per second (Gbps) symmetrical backbone ring service and up to 10 Gbps symmetrical FTTP service to the premise. The City will provide several forms of support, including (but not necessarily limited to): (i) assistance in demand aggregation; (ii) long-term contracts and support for development of high bandwidth applications to drive adoption; and (iii) marketing assistance (including working directly with vendors, local business leaders and community leaders to increase the revenue opportunities and lower the costs associated with constructing and operating the network).

The network will be open access. The City defines this to mean that the network will provide reasonable and non-discriminatory access arrangements that ensures equivalence of price and non-price terms and conditions for all retail services. In addition, the Provider must not limit the ability of retail customers to run applications, use services and connect devices of their choice to the network.

The Provider will bear all costs and own the network, including (but not limited to) design, engineering, construction, equipment and insurance for the network, up to the end-user drop point or customer optical network terminal (ONT). The Provider will install and own the fiber service connection to the end users, including the ONT, at no charge to the customer. The Provider will bear all operating and maintenance costs of the Provider-supplied network. The Provider should demonstrate a clear upgrade path for the network to meet future consumer demand and service developments. The City will charge Provider for access to City's assets and infrastructure, consistent with charges to other similar providers. The City would like the network to serve as a development platform for innovation, next-generation application development, workforce development and job creation throughout the City.

This RFP seeks proposals for the deployment and operation by the Provider of an ultra-high speed fiber network for the use of the residents and businesses within the Hillsdale City Limits. The objectives are to establish a network that:

1. Initially is able to offer up to 10 Gbps retail broadband services.
2. Uses fiber-to-the-premises network architecture.
3. Passes 100% of homes and small businesses within the City limits.
4. Is rolled out and made progressively operational over no more than 2 years from the execution date of a contract between the City and the Provider.
5. Promotes long-term economic and community interests of the City and end users.

## **1.2 Assets, facilities, services to be contributed by the City**

The City will provide the Provider with access to assets, services and infrastructure of the City to the extent they are available and needed for deployment of the network. Infrastructure may include (but not necessarily limited to) conduit, fiber, poles, switch/cabinet locations and available land and rights-of-way.

The City will use its best efforts to make such assets and services available, as requested by the Provider, on commercially-reasonable terms. The City will charge the Provider for use of any City facilities that are provided for this network, including any permits and inspection fees that are imposed by the City.

In certain cases, access to fiber, conduit, rights-of-way or other assets identified may be conditioned on (or require) approval from lessors or other third parties. In such situations, the City will work with the Provider to obtain any necessary approvals; however, it cannot guarantee their receipt.

### **1.2.1 Fiber**

The City will provide the Provider with access to available optical fibers owned or leased by the City. The City is willing to consider providing access to this fiber under an Indefeasible Right of Use Agreement at prevailing market rates.

### **1.2.2 Conduit**

The City will provide the Provider with access to existing conduit owned by the City. The City is willing to consider providing access to existing conduit under an Indefeasible Right of Use Agreement at prevailing market rates.

### 1.2.3 Rights-of-Way

Construction and the installation of equipment in the City's rights-of-way will be subject to franchise and METRO Act agreements, along with engineering permits issued by the City. Subject to existing rights-of-way and easements, the City will allow Provider access to necessary rights-of-way on property owned by the City. Such access will be provided during regular business hours for non-emergency work and 24/7 for emergency work. This access includes permission to perform construction work on City property, including construction in the streets, as needed for the network.

The City will also cooperate with Provider to gain access to rights-of-way owned or controlled by third parties within the City limits.

### 1.2.4 Pole Attachment Rights

The City operates a municipal electric utility and owns poles within the City limits. The installation of equipment on City poles will be subject to a standard pole attachment agreement and permit to be furnished and issued by the City. The City will cooperate with and assist Provider in its efforts to gain access to poles owned or controlled by third parties within the City limits. **The successful bidder will reimburse the City of Hillsdale for all Hillsdale electric system alteration expenses ("make ready") necessary for the installation of the fiber network.**

### 1.2.5 Power

The City will provide electrical power necessary for Provider's equipment at City locations. The City will charge the Provider market rates for power or related services.

### 1.2.6 City Contracts for Services and Assistance in Identifying and Generating Institutional and Enterprise Demand

The City will provide the Provider with assistance identifying and contacting other entities in the service area that may be candidates to enter into long-term contracts (two years or more) for fiber services. Such potential anchor tenants include educational institutions, large employers and other enterprises.

### 1.2.7 Other Assets, Facilities, Services

The City will provide the Provider with access to other assets and services that are owned or controlled by the City that may assist Provider in lowering the overall risk by reducing the cost structure and shortening the design and construction schedule, including:

- Access to GIS data, street maps, maps of terrain, GPS coordinates and locating services.
- Access to other communications networks through existing peering and traffic exchange agreements

### 1.2.8 Installation Standards and Codes

It is required that the respondent be thoroughly familiar with the content and intent of these references, standards, and codes and that the respondent be capable of applying the content and intent of these references, standards, and codes to all outside plant communications system designs.

Listed in the table below are references, standards, and codes applicable to outside plant communications systems design. If questions arise as to which reference, standard, or code should apply in a given situation, the more stringent shall prevail. As each of these documents are modified over time, the latest edition and addenda to each of these documents is considered to be definitive.

<b>Standard/Reference</b>	<b>Name/Description</b>
BICSI CO-OSP	BICSI Customer-Owned Outside Plant Design Manual
BICSI TDMM	BICSI Telecommunications Distribution Methods Manual
BICSI TCIM	BICSI Telecommunications Cabling Installation Manual
	Customer-Owned Outside Plant Telecommunications Cabling Standard
TIA/EIA - 568	Commercial Building Telecommunications Cabling Standard
TIA/EIA - 569	Commercial Building Standard for Telecommunication Pathways and Spaces
TIA/EIA - 606	The Administration Standard for the Telecommunications Infrastructure of Commercial Buildings
TIA/EIA - 607	Commercial Building Grounding and Bonding Requirements for Telecommunications
TIA/EIA - 455	Fiber Optic Test Standards
TIA/EIA - 526	Optical Fiber Systems Test Procedures
IEEE 802.3 (series)	Local Area Network Ethernet Standard, including the IEEE 802.3z Gigabit Ethernet Standard
NEC	National Electric Code, NFPA
NESC	National Electrical Safety Code, IEEE
OSHA Codes	Occupational Safety and Health Administration, Code of Federal Regulations (CFR) Parts 1910 - General Industry, and 1926 - Construction Industry, et al.

### 1.3 Regulatory and Other Forms of Assistance to be Provided by The City

The City will provide the Provider with access to:

- Assistance from a City full-time equivalent employee for planning, network management, etc.
- A single point of contact ("SPOC") for Provider, providing coordination across City departments, ensuring the full cooperation of all City departments.

#### 1.3.1 Expedited Permitting

The City will provide the Provider with quick, diligent review of all applications for permits, including permits necessary for construction work on the network within City right-of-way and in connection with City assets or infrastructure. This includes a commitment to review and respond to any subsequent modifications or similar documents that may require approval by the City within seven (7) working days of submission by the Provider.

### 1.4 Relationship between Provider and City

The Provider will be an independent owner of the FTTP system and will provide all design, construction and operation services for the system. Provider will provide unrestricted open access to the city for its own use. There must be **open access** i.e. unfettered access to infrastructure such as enclosure and cabinets.

## 2. Services Required

### 2.1 Description of Services Required

The City seeks a Provider to design, build, install, own, operate, maintain and manage a complete turnkey ultra-high speed FTTP communications network within the City limits. The system shall be a fully operational ultra-high speed communications network using internet protocol technology, which allows users Gbps access to and from the internet. This RFP does not require a specific technology, but the City expects that most potential providers will deploy the FTTP network using Active E, GPON, EPON, WDM PON or any other such acceptable technologies to provide up to 10 Gbps symmetrical up and down symmetrical service to residences, businesses and institutions within the City limits. This system must include all active and passive infrastructure, including single-mode fiber cabling, active repeater equipment, uninterruptible power supplies, network cross-connections, software, ancillary equipment, and ongoing maintenance.

The project must include complete system design; engineering; operation; monitoring; maintenance and enhancement; as well as negotiation and execution of access agreements with retail service providers. The network rollout will be based upon demand by community residents and businesses. The network design and operation must provide an open-access framework that maximizes wholesale and retail service delivery.

## 2.2 Network and Service Requirements:

Bidder's response shall include the following system specific network characteristics:

- Minimum capacity (in terms of number of fibers and bandwidth capacity) for (i) the backbone or metropolitan-area ring, (ii) residential users, (iii) enterprises/institutional users and (iv) government, institutions/public safety users.
- Development and implementation of open-access structure for service delivery.
- Bandwidth and technology gateway with caching for open access to cloud based and over-the-top (OTT) services (online delivery of video and audio content).
- Billing and settlement services.
- Wholesale internet-access service to the City of Hillsdale.
- Physical and logical layer network service access.
- Dedicated wave/VLAN services.
- Specify the expected dB loss of the network in an acceptable format.
- At least 50Mbps/10Mbps fiber to the residence at a rate of no greater than \$40.00/month.
- At least 150Mbps/50Mbps fiber to the residence at a rate of no greater than \$60.00/month.
- At least 1Gbps/1Gbps fiber to the residence at a rate of no greater than \$200.00/month.
- Service Level Agreement for the Network – Network Availability > 99.95%, Download/Upload bandwidths must be available 95% of the time, Packet Loss less than .5%, Network Latency less than 20 milliseconds (ms).
- All monthly rates will remain constant for the first three (3) years after the network is commissioned.
- The rates can only increase annually by the consumer price index (CPI) after the first three (3) years.
- The Provider will be responsible for the cost of the fiber service to the premise, including the ONT.
- A local office must be maintained in the City of Hillsdale, where business can be transacted with customers.
- Billing and sales must be available during normal business hours of 8:00 AM - 5:00 PM.
- All telephone inquiries must be answered within 60 seconds, at a minimum of 95% of the time, with an abandonment rate at less than 3%.
- Technical support must be provided on a 24/7 basis.
- Technical repair requests must be responded to in 24 hours or less.



- Network operations center (NOC), including:
  - a) Services for device provisioning and fault management services.
  - b) Proactive monitoring of network backbone and CPE equipment.
  - c) Network configuration and verification.
  - d) Troubleshooting with backbone provider.
  - e) Alerts and notifications, including:
    - i. Monitor equipment alarms 24/7
    - ii. Network troubleshooting for outages
    - iii. Policy based technician dispatching
    - iv. Simple Network Management Protocol (SNMP) and TL1 alarm monitoring.
    - v. Live online portal with documentation along with visibility of network and trouble ticket status for the City of Hillsdale.

### 2.3 Responses to Scope of Work

Each potential Provider shall submit a business and technical plan which describes the approach to the project in this RFP. The business plan shall describe the Provider's approach to design, construction, operation and management of the network and the services to be provided over the network in sufficient detail to allow the City to effectively consider the proposal. The Provider shall also include a description of the day-to-day operations and the management of all responsibilities related to the project and explain how the Provider will fulfill the Network and Service Requirements in Section 2. This should include (at a minimum) the following:

- Technology: A description of the network technologies underlying the proposed network solution(s). Each description should include the following information:
  - Technologies proposed and the limitations of each technology, and if a variety of technologies are contemplated, a discussion of the factors likely to influence the choice of technologies;
  - Details as regarding the network design including (but not limited to): network design criteria, network elements, architecture, protocols, system reliability, availability, operations and maintenance;
  - Network performance characteristics, including the range of offerings, the capacity and other factors relevant for each proposed solution.
- Service offerings: A description of proposed retail service offerings that the Provider anticipates offering institutional, business and residential customers, including (but not limited to):
  - Broadband service offerings (type of broadband service, speed tiers, differences between business and residential offerings);
  - Ancillary service offerings (including those identified in Section 2.2) that may be provided by the Provider;

- Pricing strategy
- Explanation of Provider’s willingness to work with the City to develop unique pricing or packages for key community stakeholders and populations (e.g., government, K-12 facilities, economically distressed areas).
- Rollout strategy: A project management time line for the deployment strategy of the proposed rollout.
- Roles and responsibilities: A description of the roles and responsibilities envisioned for Provider, Provider team members, City, and (if applicable) third parties, for each of the following:
  - Network design
  - Network construction
  - Network operations and management
  - Community outreach and customer acquisition
- Financial Projections: The business plan should include a pro forma financial statement, identifying projected capital outlays, ongoing operational costs, and expected revenues from wholesale and retail services for at least the first ten years of construction and operation. The plan should identify and quantify all key assumptions underlying the calculations. The total (engineering, design, construction) projected cost must be included to satisfy requirements of the METRO Act.

## 2.4 Provider Qualifications

### Experience in Ultra-High Speed Network Design and Operation

The Provider should provide a statement of experience, highlighting similar network systems that it has designed, constructed and operated, including project name, location, size, technology used, and reference contacts (name and phone number). Also, indicate whether each system is owned by the Provider or another entity.

### Financial Stability

Provider shall submit its three most recent annual financial statements in order to permit analysis of its financial resources and recent Dunn & Bradstreet reports. In addition, the successful bidder shall provide a performance bond in the amount of \$1,000,000.00 (or as otherwise agreed) to guarantee satisfactory completion of the project.

### Proposal Guaranty

Each proposal shall be accompanied by a cashier’s check, certified check, money order or a bid bond by a recognized surety company, in an amount of \$175,000 payable to the City of Hillsdale. The proposal guaranty may be forfeited to the City in case of failure on the part of the successful bidder to enter into a contractual agreement to complete all aspects of this FTTP project within the time stated therein.

### Staff Technical and Managerial Experience

Provider shall include a statement of experience and resumes of the project team, including the project manager and other key personnel who will be assigned to this project. Also, include a list of any known or anticipated subcontractors along with their roles and responsibilities.

### Evidence of Legal Capacity

Provider shall include copies of Provider's most recent federal and Michigan annual reports and current licenses to provide telecom/communications services, a certification that all Michigan business and regulatory registrations/filings/taxes are current, and all internal corporate documents are kept and up to date (e.g. meeting minutes, bylaws, etc.). Proposals must be signed by an authorized representative of bidder.

### Insurance Requirements

All bidders must comply fully with the insurance requirements stated under the METRO Act Model Bilateral Permit Form, and must provide proof of coverage with their bid response including but not limited to Section 6.1.

Any deviation from these explicit requirements or failure to attach proof of current and active insurance coverage as stated herein will result in immediate disqualification of a bid response.

## **3. Administrative Issues**

### **3.1 Availability of the RFP and Amendments**

A Portable Document Format (PDF) version of this RFP is available on the City's website at <http://www.cityofhillsdale.org>. Amendments to the RFP will be posted on the project website at <http://www.cityofhillsdale.org>. Any amendments supersede prior provisions and are effective upon posting on the project website. Each potential bidder is responsible for checking the website to learn of any amendments.

### **3.2 Questions about the RFP**

The primary RFP contact for the City project team is the City Clerk: Stephen French. All general correspondence and any questions about this RFP must be submitted via email to [sfrench@cityofhillsdale.org](mailto:sfrench@cityofhillsdale.org). The last date for questions will be 5:00 PM (EDT) on . All questions will be considered to be public and released with an answer at [www.cityofhillsdale.com](http://www.cityofhillsdale.com) as expeditiously as possible. The identity of the person posing the question(s) will not be disclosed.

Providers should not directly contact any other City staff member. Any attempts to contact other City staff regarding this RFP (other than via the email process highlighted above) may be grounds for the City to reject the submission.

### 3.3 Additional Material

Providers are encouraged to review any additional materials and updates that may be provided prior to submitting their proposals at the project website noted above.

### 3.4 Informational Session

There will be a mandatory pre-bid informational session on [redacted] (EDT) at City Hall, 2<sup>nd</sup> Floor Conference Room, 97 North Broad Street, Hillsdale, Michigan 49242.

### 3.5 Proposal Format and Certification

Proposals should be organized in the same sequence as Section 2 of this RFP, with responses referencing the appropriate corresponding RFP item(s). Providers should respond to each item at the level of detail which each is presented, or list a variance with a particular item and propose alternate terms and (as applicable) supply any supportive detail. Proposals not conforming to the proper format or failure to respond to any required items may result in a Provider's disqualification and/or rejection of the proposal. Where the Provider is requested to supply information, include that information in the body of the proposal, or reference the attachment where it is included. A duly authorized officer or agent of the Provider must sign the proposal. Proposals that are not signed will not be considered.

### 3.6 Project Calendar

#### Anticipated Event Dates

- RFP Advertised and issued:
- Proposals Due:
- Proposal Evaluation Completed by:
- Interviews with finalist firms no later than:
- Award and Letter of Intent for Contract no later than:
- Contract finalized no later than:
- Selected firm begins work no later than:
- First progress report due:

### 3.7 Proposals Due Date and Submission

Proposals are due by 4 PM (EDT) on . All of the bid documents shall be submitted in a sealed envelope. The envelope shall be clearly marked to indicate "CITY OF HILLSDALE FTTP BID" along with the name of the bidder. Proposals received after the deadline will not be considered. Proposals must be submitted via priority or certified mail. Two (2) hard copies and one (1) complete electronic hard copy are required for the submitted proposal. Faxed proposals will not be accepted. Providers assume the risk of the methods of dispatch or delivery chosen. Office hours for receipt of mailed or expressed proposals are Monday through Friday, 8:00 am - 5:00 PM (EDT). Proposals shall be sent to the following address:

City of Hillsdale Fiber to the Premise RFP  
Response City of Hillsdale Clerk  
97 North Broad Street  
Hillsdale, MI 49242

### 3.8 Process and Criteria for Evaluation of Proposals

The proposals will be opened publicly and reviewed internally at the convenience of the City. All proposals will be evaluated at the City's sole discretion. An award, if any, will be made to the bidder who demonstrates the best ability to meet the overall goals of the project, with particular emphasis on the ability to fulfill the scope of work in the most timely and efficient manner.

Some of the qualifications evaluation criteria include (but are not limited to):

- Quality of response
- Upfront investment by Provider
- Experience of project team references
- Provider experience
- Financial strength of Provider
- Feasibility of Provider financial proposal

### 3.9 Clarification of Proposals

Notwithstanding any other provision of this RFP, the City reserves the right to:

1. Initiate discussions with any (or all) potential vendors for the purpose of clarification of proposals.
2. Waive (or decline to waive) any defect in any proposal.
3. Accept, reject, or negotiate any (or all) proposals or the terms of any proposal (or any parts thereof) for the purpose of obtaining the best and final offer.
4. Cancel or amend this RFP, or issue other requests for proposals.

5. Select a Provider based solely upon its analysis and evaluation of proposals submitted and request presentations on proposals if it believes further information is appropriate to the decision-making process.
6. Select no proposals at all.
7. Use any (and all) concepts presented in any proposal to obtain the most beneficial and effective path to achieving its desired goals for the project.

### **3.10 Negotiation and Execution of Contracts**

The selected Provider agrees to execute a contract consistent with the terms of this RFP as modified for the proposal specifics within 30 days of the award. If the parties are not able to reach agreement and execute a contract within 30 days of the award, the City may declare the award void and may select another Provider or issue a new RFP or proceed otherwise as it sees fit.

The negotiated contract will include a requirement for the Provider to provide a bond (or other form of financial assurance) to ensure that the City does not have to assume unanticipated costs of finishing the project. The purpose is to prevent the Provider from “walking off the job.”

### **3.11 Commencement of Work**

The submission of a proposal in response to this RFP (and the subsequent evaluation of that response by the City) does not constitute a contract or any type of agreement between the City and any Provider for the commencement of work or the performance of any obligation. Only a written contract approved by City Council will authorize the commencement of work or obligate the City on this project.

### **3.12 Use of Subcontractors**

Providers may use City approved subcontractors to fulfill any obligations in connection with the project. Use of subcontractors shall be subject to all applicable state and federal laws. A Provider shall remain liable for fulfilling all its obligations on the project and for any claims or damages arising from the subcontractor’s work.

### **3.13 Proposal Costs**

Responding Providers are responsible for all expenses they incur in preparing and submitting a proposal or in contract negotiations with the City, even if the City elects to reject all proposals. The City will not be liable for any costs or damages incurred by any Provider in preparing and submitting a proposal.

### **3.14 Applicable Statute**

The City is a public entity. As a result, this RFP is subject to a variety of public procurement requirements, including (but not limited to) federal and state records disclosure statutes. The Provider is responsible for knowing and complying with all applicable federal, state and local laws and regulations.

### **3.15 Errors and Omission in a Proposal**

The responding bidder is responsible for all errors and omissions in its proposal. If it discovers an error and wishes to withdraw its proposal, the responding Provider should immediately notify the City. Depending on the stage of the process, the bidder may be liable for costs incurred by the City in analyzing the proposal or negotiating a contract.

### **3.16 Errors and Omission in the RFP**

If the City becomes aware of an error or omission in the RFP, it will post a notice on its website. If the City discovers an error or omission after the proposals are submitted, it may, at its discretion, proceed or reissue the RFP. Even if it elects to rebid the RFP, the City will not be liable for any costs or damages incurred by any bidder in preparing and submitting the original proposal.

### **3.17 Objections to RFP Terms**

Any objections to RFP terms must be conveyed (in writing) to [sfrench@cityofhillsdale.org](mailto:sfrench@cityofhillsdale.org) and must be submitted by the deadline for submission of questions about the RFP in Section 3.2.

### **3.18 Acceptance of RFP/Proposal Content**

By submitting a proposal, a bidder certifies that it has read, understood, and agreed to all requirements, terms, and conditions in this RFP. A bidder may withdraw its proposal prior to the RFP response deadline.

### **3.19 No Waiver of RFP Provisions**

The City may (but is under no obligation to) waive any provision in this RFP at the request of a potential bidder. Any such waiver shall apply to all potential bidders, and no waiver shall constitute a waiver of any provision not specifically referenced therein.

### **3.20 Ownership and Confidentiality of Proposals**

The City will not pay for any information requested herein, and all proposals submitted become the property of the City. Proposals will not be returned and may be subject to disclosure pursuant to law including the federal or state Freedom of Information Act.