



Staff Report

File #: 17-146

Version: 1

Date: 4/10/2017

Item #: 3.3b.

TO: Mayor and City Council
THROUGH: Steve Powers, City Manager
FROM: Ryan Zink, Franchise Administrator

SUBJECT:

Use of City rights-of-way by Salem-Keizer School District for telecommunications network.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

ISSUE:

Shall the City Council authorize the City Manager to execute an Intergovernmental Agreement with Salem-Keizer School District 24J for the School District's occupation of the City's rights-of-way for the placement of telecommunications system facilities within the City's rights-of-way?

RECOMMENDATION:

Authorize the City Manager to execute an Intergovernmental Agreement with Salem-Keizer School District 24J for the School District's occupation of the City's rights-of-way for the placement of telecommunications system facilities within the City's rights-of-way.

SUMMARY AND BACKGROUND:

The Salem-Keizer School District 24J (School District) is constructing a dedicated fiber optic telecommunications network connecting 65 schools and administrative buildings. The School District has been granted a Federal Communications Commission (FCC) internet connectivity "E-Rate" grant to fund 80% of the project. The School District desires to enter into an Intergovernmental Agreement with the City to occupy the City's ROW for the purpose of construction, use, operation and maintenance of a telecommunications system. Staff and representatives from the School District have negotiated reasonable terms and conditions for the School District's use of the ROW as set out in the Intergovernmental Agreement Between the City of Salem and Salem-Keizer School District 24J (Attachment 1).

The City of Salem (City) is authorized to grant non-exclusive franchises or to enter into other agreements to occupy public rights-of-way (ROW) and other public property to construct, use, operate, and maintain telecommunications systems or other public utilities within the corporate boundaries of the City.

FACTS AND FINDINGS:

In accordance with SRC 35.020(a), a public utility must have a valid franchise or other form of agreement from the City to occupy the City's ROW and other public property. SRC Chapter 35 applies to the School District with respect to occupying the City's ROW for a telecommunications system.

The Intergovernmental Agreement Between the City of Salem and Salem-Keizer School District 24J (IGA) provides for an initial ten-year term, with two renewal periods of five years each which will occur automatically unless the agreement is terminated.

SRC 35.220(b) allows the City to impose a fee on a public utility other than the City's linear foot fee. In determining a fee amount other than the City's linear foot fee, the City may consider whether the public utility realizes any revenue from the telecommunications service, whether the telecommunications service provides a benefit to the public, and any other factors deemed relevant by the City. Imposition of the City's linear foot fee would make the School District's project cost prohibitive. Under the IGA the School District will pay to the City a minimum annual fee of \$10,000 and will pay the City all annual payments for the initial ten-year term of this Agreement within 30 days of the effective date.

Factors considered in the recommended ROW fee:

- The School District is a municipal corporation authorized under ORS Chapter 332 to provide public K-12 education within the City of Salem.
- The School District's use of the ROW is not for the purpose of a business enterprise for commercial purposes.
- The School District will not derive any gross revenue from the telecommunications service provided on the Telecommunications System occupying the City's Rights-of-Way pursuant to the IGA.
- Under the terms of the E-rate program, the School District is prohibited from deriving gross revenue from the facilities used to provide telecommunications services funded by the grant.
- The School District provides a unique service to its constituents for public benefit and not for commercial gain, and which will be furthered by the execution of the IGA.

The School District will pay the City \$5,000 within 30 days of the effective date of the IGA to offset the City's pre-agreement costs.

The City may use the School District's surplus ducts or conduits for no fee, in accordance with applicable federal laws, rules, and regulations.

The terms of the IGA addresses those matters generally addressed in an agreement granting authority to use the City's ROW and public property for the placement of telecommunications system facilities.

RYAN ZINK
FRANCHISE ADMINISTRATOR

Attachments:

1. Intergovernmental Agreement Between the City of Salem and Salem-Keizer School District
24J