



Staff Report

File #: 18-244

Version: 1

Date: 5/29/2018

Item #: 7.2a.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Ryan Zink, Franchise Administrator

SUBJECT:

Granting a franchise to Comcast of Oregon I, Inc. for placement of facilities in the City rights-of-way.

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

ISSUE:

Shall the City Council authorize the City Manager to execute the Cable Television Franchise Agreement and Side Letter Agreement between the City of Salem and Comcast of Oregon I, Inc.; and conduct second reading for enactment of Ordinance Bill No. 5-18, granting a franchise to Comcast of Oregon I, Inc. to make lawful use of the City rights-of-way to construct, operate, maintain, reconstruct, and repair a cable system for the purpose of providing cable services?

RECOMMENDATION:

Authorize the City Manager to execute the Cable Television Franchise Agreement and Side Letter Agreement between the City of Salem and Comcast of Oregon I, Inc.; and conduct second reading for enactment of Ordinance Bill No. 5-18, granting a franchise to Comcast of Oregon I, Inc. to make lawful use of the City rights-of-way to construct, operate, maintain, reconstruct, and repair a cable system for the purpose of providing cable services.

SUMMARY AND BACKGROUND:

Comcast of Oregon I, Inc. (Comcast) currently operates a nonexclusive cable system in the City of Salem. Granting this franchise to Comcast will allow them to continue to operate this system and give them continued authorization to place facilities necessary for operation of their system within the City's public rights-of-way.

Salem Revised Code (SRC) Chapter 43, the Cable Communications Franchise Code, provides for and

specifies the means to grant or renew nonexclusive cable television franchises to construct, operate, maintain and reconstruct cable television systems within the City limits. Since 2010, Comcast has been operating under limited duration extensions of its previous cable television franchise. During this time, staff and Comcast have negotiated the terms of Comcast's cable television franchise renewal.

The terms of the franchise, as set out in Ordinance No. 5-18 (Attachment 1), are contained in the Cable Television Franchise Agreement Between the City of Salem and Comcast of Oregon I, Inc. (Agreement) (Attachment 2), and all applicable local, state, and federal, laws and rules, and regulations, unless waived by action of the City Council.

FACTS AND FINDINGS:

Aspects of New Franchise: The terms of the new franchise with Comcast are comprehensive, including the following general categories: 1) Grant of the franchise, 2) Competitive equity (for both governmental and non-governmental cable providers, 3) Franchise fees and financial controls (auditing, insurance, and liability provisions), 4) Customer service requirements, 5) Public, Education, and Government (PEG) funding and High Definition (HD) channels, 6) Construction and Relocation, 7) Franchise violations and remedies.

The new franchise will be for a period of 10 years beginning July 1, 2018. To compensate the City for use of its rights-of-way, Comcast will continue to pay an annual franchise fee of five percent of gross revenues, and will pay an additional one and one-half percent of gross revenues to support PEG programming. Comcast will provide two HD PEG channels, one within 120 days of the effective date of the Agreement and a second after three years. Comcast will continue to provide, at no cost to the City, one outlet of cable service to all public use buildings designated by the City, and libraries and schools, as of the effective date of the Agreement, with provisions for additional outlets contained in the Agreement. The Agreement address the issue of grants of additional cable television franchises to other wireline competitors, and states that if the City or another governmental agency provides comparable video services it may be considered a competitor.

First reading of Ordinance Bill 5-18 occurred on May 14, 2018.

Side Letter Agreement: The Side Letter Agreement (Side Letter) (Attachment 3) sets forth commitments between the City and Comcast that are in addition to, but not part of, the new Agreement. The Side Letter addresses a unique aspect of the current franchise (originally negotiated with a predecessor to Comcast) in which Comcast provided an institutional network by means of *dark fiber* to the City for public, educational, and governmental use, including the interconnectivity of municipal buildings. The new Agreement does not include a provision allowing the City to continue use of this fiber, as cable companies are generally moving away from providing institutional networks as part of the negotiated terms. The Side Letter provides the terms under which the City, during the term of the Agreement, will return the fiber back to Comcast, as the City builds out its own network and no longer needs the fiber provided by Comcast. Additionally, the Side Letter sets the rate the City will pay to Comcast for any fiber the City continues to use after five years from the effective

date of the Agreement. Under the Side Letter, the City will be returning 150 strands of fiber within 30 days, an additional 23 strands within 60 months, and the remaining nine strands by the end of the ten-year Agreement. The attachment to the Side Letter is a list of all strands of fiber currently provided by Comcast (Attachment 4). Staff anticipates that the City will be able to meet these return obligations.

The Agreement allows for modification by mutual consent of the parties. The City Manager may execute amendments to the Agreement if the following requirements are met:

- a. The amendments do not substantially expand the City's obligations;
- b. The amendments do not broaden the scope of the Agreement to other subject matters.
- c. The amendments do not increase the City's financial obligations; and,
- d. The amendments may extend the term or renew the Agreement so long as any other changes to the Agreement do not substantially expand the City's obligations.

RYAN ZINK
FRANCHISE ADMINISTRATOR

Attachments:

1. Ordinance Bill No. 5-18
2. Ord. No. 5-18 Exhibit A (Cable Television Franchise Agreement)
3. Side Letter Agreement
4. Side Letter Agreement Attachment