555 Liberty St SE
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# CITY OF SALEM

## Staff Report

**File #:** 20-467
**Version:** 1

**Date:** 11/23/2020
**Item #:** 3.3e.

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Ryan Zink, Franchise Administrator

**SUBJECT:**

Intergovernmental Agreement between the City of Salem and the State of Oregon granting use of the City rights-of-way for State telecommunication facilities.

Ward(s): All Wards
Councilor(s): All Councilors
Neighborhood(s): All Neighborhoods
Result Area(s): Good Governance

**ISSUE:**

Shall the City Council authorize the City Manager to execute the Intergovernmental Agreement between the City of Salem and the State of Oregon, granting nonexclusive use of the City rights-of-way?

**RECOMMENDATION:**

Authorize the City Manager to execute the Intergovernmental Agreement between the City of Salem and the State of Oregon, granting nonexclusive use of the City rights-of-way.

**SUMMARY:**

The State of Oregon (State) owns telecommunications facilities in the City of Salem (City) rights-of-way (ROW), commonly known as the Salem Metropolitan Area Network (MAN). The existing agreement with the State, signed in 2003, does not align with how the State currently operates the MAN. Staff worked with the State to negotiate a new intergovernmental agreement (IGA) that aligns with current operations of the MAN and meets current contract standards. The existing agreement will expire upon the execution of the IGA.

**FACTS AND FINDINGS:**

Salem Revised Code (SRC) Chapter 35 requires public utilities to have an agreement with the City to occupy the ROW and to pay a fee to the City for its use of the ROW.

In accordance with Salem Revised Code Chapter 35, the IGA (Attachment 1) grants to the State a nonexclusive right and privilege to access the ROW for the purpose of constructing, operating, and maintaining the MAN within the city. The IGA will be effective January 1, 2021 and continue until June 30, 2025. The IGA will automatically renew for a single five-year term, unless 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. Under the IGA, the State will, as compensation for use of the ROW, pay an annual fee of $40,000 which shall increase annually based on the CPI as defined in the IGA.

Factors considered in the recommendation of the ROW fee:
• The State is a non-profit government agency.
• The State's use of the ROW is not for the purpose of a business enterprise for commercial purposes.
• The State derives no local service revenue from the operation of the MAN within the city
• The State provides unique services to its constituents for the public benefit and not for commercial gain, and which will be furthered by the execution of the IGA.

The terms of the IGA address 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.

**BACKGROUND:**

Prior to July 2015, the State earned revenue on the provision of telecommunications services through the MAN. The State remitted to the City a fee of 7% of gross revenue received on those services. In July 2015, the State changed how it recovered costs from State agencies for services provided, including telecommunications services. In doing so, revenues were no longer directly earned or attributed to the MAN. According to SRC 35.220, when a public utility occupies the ROW, but does not earn gross revenue, it pays a fee based on the linear footage of facilities in the ROW. If the City were to impose a linear foot fee on the State for its use of the ROW, the State's annual fee would be approximately twice the amount previously paid. The $40,000 annual fee is materially similar to the amount previously paid when the State's annual fee was based on a percentage of gross revenue.

RYAN ZINK
FRANCHISE ADMINISTRATOR

Attachments:
1. IGA between City and State.
2. Existing IGA between City and State (2003).