



Legislation Text

File #: ID-344-22, Version: 1

Department of Attorney's Office

Reference: ALLO Franchise Agreement

To: Mayor Gregory Mills and Members of City Council

Through: Michael P. Martinez, City Manager

Prepared By: Marv Falconburg, Deputy City Manager
Yasmina Shaush, Assistant City Attorney
Jeanette Gallagher, Executive Administrator/Legal Assistant

Date Prepared: September 19, 2022

PURPOSE

To approve a franchise agreement, and other ancillary agreements, between the City of Brighton ("City") and ALLO Cable Communications, LLC ("ALLO").

STRATEGIC FOCUS AREA

Strong Local Employment Opportunities

BACKGROUND

The City Manager's Office, the City Attorney's Office, City staff across various department, outside counsel for the City, and ALLO, over the course of several months, have negotiated a franchise Agreement, and other related agreements, including a master license agreement and supplemental site license agreement (collectively, the "Franchise Agreement") for the installation of telecommunications systems across the City. The Franchise Agreement will be brought before the City Council for consideration at a regular meeting.

CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM

Approval or denial of a cable franchise requires an ordinance of the City and an associated public hearing. Review criteria by which a cable franchise may be denied are set forth in federal law and include:

1. The Cable Operator does not have the financial, technical, or legal qualifications to comply with the terms of a franchise that meets the future cable-related needs of the community, taking into account the costs of meeting those needs; or
2. The Cable Operator will not provide adequate public, educational, and governmental access channel capacity, facilities, or financial support; or
3. The Cable Operator's proposed terms do not comply with applicable federal, state, and local laws and regulations, including but not limited to local customer service standards or relevant existing contractual obligations of the City; or
4. The Cable Operator has a record of violations of its obligations under its existing franchise with the City.

The City and ALLO have conducted what are considered "informal" negotiations under federal law. If Council decides to

deny this proposed franchise agreement, the City and ALLO would then commence “formal” negotiations under the federal Cable Act. After following the more stringent regulatory requirements in the federal statutes, Council would have another opportunity to accept or reject ALLO’s proposed franchise.

The recommended Franchise Agreement (attached) is based largely on the Colorado Communications and Utility Alliance (“CCUA”) model agreement, which has been the basis for negotiations between ALLO and other Colorado municipalities. The City of Brighton has been a long-standing member of CCUA.

If approved, this would grant a ten (10) year Cable Franchise Agreement to ALLO.

Discussion: Franchise agreements allow private companies to make use of public-rights-of-way for private purposes. Components of franchise agreements include items such as terms, franchise fees, buildout requirements, among other important topics. A cable operator pays franchise fees as compensation for the use of public property, similar to paying a lease for City rights-of-way. The franchise fee is equivalent to 5% of gross revenues derived from the operation of the cable system within the City. Franchise fees may be passed through directly to subscribers by the cable operator.

The recommended Franchise Agreement with ALLO is attached. Key provisions of the proposed agreement include:

1. **Term:** The franchise would run from 2022 for ten (10) years until 2032.
2. **Franchise Fees:** In return for the nonexclusive right to use portions of the public right-of-way, ALLO will remit franchise fees in the amount of 5% of gross revenues to the City.
3. **Public, Educational, and Governmental (“PEG”) Fees:** Collection of PEG fees to support the City’s PEG operations.
4. **PEG Video on Demand (“VOD”) Programming:** ALLO shall provide the City fifty (50) hours of VOD capacity on ALLO’s Cable System VOD platform for PEG Access programming.
5. **Compliance with Federal, State, and Local Laws:** ALLO is required to fully comply with all equal employment or non-discrimination provisions and requirements of federal, state, and local laws.
6. **Rate Discrimination:** ALLO is required to establish rates without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability, or geographic location within the City. Rates must be established in a non-discriminatory manner in accordance with federal, state, and local laws.

Proposed Approval Process: The Colorado statutes and the Federal law have specific requirements regarding the approval of a cable franchise, most importantly addressing publication of a notice and requiring a public hearing. Notice will be published once a week for three (3) consecutive weeks prior to second reading.

FINANCIAL IMPACT

There is no direct fiscal cost associated with the Franchise Agreement. The exact amount of the franchise fee revenues the City receives from ALLO are dependent upon gross revenues.

ATTACHMENTS

1. Franchise Agreement
2. Master License Agreement
3. Supplemental Site License Agreement
4. ALLO PowerPoint