



City of Olathe

COUNCIL AGENDA ITEM

MEETING DATE: 5/19/2020

DEPARTMENT: Legal

STAFF CONTACT: Ron Shaver/Daniel Yoza

SUBJECT: Ordinance No. 20-17 amends the City's existing contract franchise. An Amendment to the Master License agreement with ExteNet Systems, Inc. has also been prepared. These documents define the relationship between ExteNet Systems, Inc. and the City. Because of recent changes in Federal regulations, certain changes are needed to these documents.

ITEM DESCRIPTION:

Consideration of Ordinance No. 20-17 making certain amendments to the contract franchise with ExteNet Systems, Inc. (Ordinance 12-07) and amendments to the Master License agreement with ExteNet Systems, Inc.

SUMMARY:

This item was presented as a report at the May 5, 2020 City council meeting. In 2012, the City granted ExteNet Systems, Inc. ("ExteNet") a contract franchise by adoption of Ordinance No. 12-07 (Attachment A). The franchise allows ExteNet to use the City's right-of-way to construct and install its facilities for the purpose of providing telecommunication services in Olathe. In 2014 the City agreed to a Master License Agreement ("MLA") with ExteNet (Attachment B) which defined how Extenet would seek permission and pay for the right to use City facilities. Similar Franchises and MLA's with ExteNet are being used in Lenexa, Overland Park and Leawood. The City of Olathe has also used this structure of agreement with other similar companies, such as Unite Private Networks and Mobilitie. The main purpose of these agreements is to protect the public right-of-way, and to ensure that fair and uniform fees are charged to all similarly situated providers.

On September 27, 2018 the FCC released Declaratory Ruling and Third Report and Order, 18-133. This ruling included language that provided that annual fees of \$270 or less per attachment are presumed reasonable under federal telecommunications law. The existing MLA with ExteNet provides for an annual fee of \$540. Verizon Wireless began attaching facilities to City streetlights after the FCC ruling, and are currently paying annual fees of \$270. Federal law requires Cities to treat Telecommunications providers in non-discriminatory manner, therefore most prudent course of action is to simply agree to and accept the \$270 annual fee going forward.

Since the Ordinance (Attachment C) and MLA (Attachment D) needed to be amended, they were also generally updated to reflect changes in State law, evolving technological terms, and changes in City Ordinances. Finally, Extenet Systems, Inc., has restructured as ExteNet Asset Entity, LLC. The Ordinance and MLA acknowledges this fact and bind the correct entity to the City in the Ordinance and MLA.

FINANCIAL IMPACT:

The City will receive compensation for any facilities located in the City's right-of-way in accordance

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with the MLA and the franchise.

ACTION NEEDED:

Approve Ordinance No. 20-17 amending the contract franchise with ExteNet Systems, Inc. and the Master License Agreement for Attachments to City Facilities.

ATTACHMENT(S):

Attachment A - Ordinance No. 12-07

Attachment B - ExteNet Master License Agreement

Attachment C - Ordinance No. 20-17 ExteNet Franchise Amendment

Attachment D - Amendment to ExteNet MLA