



Recommendation for Action

File #: 21-3697, **Agenda Item #:** 48.

12/9/2021

Posting Language

Approve a resolution authorizing execution of a contingency fee agreement with McKool Smith, P.C., Ashcroft Sutton Reyes LLC, and Korein Tillery, LLC for legal services representing the City pursuing legal claims against the video service companies of Netflix, Inc., Hulu LLC, Disney DTC LLC, and others to recover compensation for use of City rights of way for delivery of video services.

Lead Department

Law Department.

Fiscal Note

This item has no fiscal impact.

For More Information:

Clark Cornwell, Assistant City Attorney, (512) 974-6482.

Additional Backup Information:

The Texas Constitution and the City's Charter prohibit private use of the City's rights of way without compensating for their use. Chapter 66 of the Texas Utilities Code allows cable and video service providers to obtain a state franchise for using municipal rights of way to deliver subscription-based video services, requiring the video service providers to pay five percent of gross revenue to the municipalities in which they use rights of way to provide services. The companies of Netflix, Hulu, and Disney use the City's public rights of way to provide their video services to subscribing customers via broadband internet through wireline facilities located at least partially in the public right of way.

The Law Department is not currently staffed at a level that would allow it to take on the considerable and specialized effort necessary to pursue these claims. We recommend authorizing the City to engage the firms McKool Smith, P.C., Ashcroft Sutton Reyes LLC, and Korein Tillery, LLC on a contingency fee basis to represent the City pursuing claims against the video streaming service companies of Netflix and Disney to recover compensation for use of City rights of way for delivery of video services.

Approval of the proposed resolution authorizes the City to engage the firms on a contingency fee basis and pursue the claims in accordance with the requirements of Subchapter C of Chapter 2254 of the Texas Government Code relating to approval of contingency fee-based legal service contracts.

Strategic Outcome(s):

Government that Works for All.