



Legislation Details (With Text)

File #:	18-601	Version:	1	Name:	ExteNet MLA (SR)
Type:	Staff Report	Status:	Filed	In control:	City Council
On agenda:	12/3/2018	Final action:	12/3/2018	Enactment date:	
Enactment date:		Enactment #:		Title:	Staff Report for a City of San Leandro City Council Resolution to Approve a Master License Agreement for Small Cell Pole Attachment Installations with ExteNet Systems (California) LLC
Sponsors:	Keith Cooke			Indexes:	
Code sections:				Attachments:	

Date	Ver.	Action By	Action	Result
12/3/2018	1	City Council	Received and Filed	

Staff Report for a City of San Leandro City Council Resolution to Approve a Master License Agreement for Small Cell Pole Attachment Installations with ExteNet Systems (California) LLC

SUMMARY AND RECOMMENDATIONS

Staff recommends that the City Council adopt a resolution to approve a Master License Agreement for Small Cell Pole Attachment Installations, which includes the following:

- Adoption of a Resolution that approves a Master License Agreement (MLA) for Small Cell Pole Attachment installations with ExteNet Systems (California) LLC (“ExteNet”);
- Acceptance of administrative and license fees pursuant to the MLA;
- Authorization for the City Manager to execute the MLA; and
- Authorization for the City Manager to execute all subsequent Pole Licenses.

The MLA will allow ExteNet to install cellular wireless equipment on City-owned street lights and similar City-owned utility poles. The MLA and subsequent Pole Licenses will provide authority for the City to review and permit each site location and to charge ExteNet appropriate processing and license fees.

BACKGROUND

Historically, large telecommunication antennas (“macro towers”) have been installed to support wide geographic areas and thousands of devices at once. However, these antennas are expensive to build and operate. Mobile device usage has grown rapidly in recent years, requiring more bandwidth and placing heavy demand on existing network infrastructure. As a result, mobile service providers are beginning to supplement their current 4G networks with small cellular base stations (“small cells”) to

increase bandwidth and capacity on their networks. A small cell is generally considered any device that is not a “macro” site and acts similar to a mobile hot spot in that it covers a small area with high-density usage.

These 4G small cells, and the evolution to 5G wireless technology, depend on closely spaced antennas for which street lights and similar municipal vertical assets are ideal for cost effective installations. Wireless infrastructure companies build and maintain “neutral” wireless network infrastructure that they in turn can lease through partnership agreements to wireless service providers. Additionally, some wireless service providers choose to build and maintain their own infrastructure to provide mobile and cellular services.

City staff worked with ExteNet to draft a MLA that will govern and regulate the deployment of small cells throughout the City. Other telecommunication companies who previously expressed interest in negotiating MLAs with the City withdrew from negotiations. Their choice to withdraw from negotiations was presumably based on a September 26, 2018 action by the Federal Communications Commission that preempts local control over small cell deployment. The FCC’s adopted order is scheduled to go into effect in January 2019, though it has been challenged in Federal Court by cities and related groups, including the League of California Cities.

Analysis

Despite the FCC order, staff completed negotiations with ExteNet. ExteNet expressed a willingness to execute a MLA in order to gain certainty from the City on the regulations that will govern equipment deployments in the long term. ExteNet is voluntarily entering into a MLA with the City as it has determined that the terms allowed sufficient certainty that its capital investment would be recouped.

The MLA details various requirements to protect community aesthetics, health, safety, and welfare in the public right-of-way. The MLA is consistent with the City’s goals, and will establish the legal relationship and framework under which ExteNet may apply to the City for site-specific and governing Pole Licenses to install small cells on City assets.

The key terms and conditions of the MLA include the following:

- The first term of the MLA is five years with two subsequent automatic five-year renewals. It also includes optional five (5) year renewal terms to provide a sufficient long-term arrangement if both parties so desire;
- Pursuant to the MLA, the licensee is required to obtain individual Pole Licenses for every pole where small cell facilities are proposed;
- Individual Pole Licenses require the licensee to obtain all applicable and necessary regulatory approvals, including a City-issued Encroachment Permit, prior to becoming effective;
- The term of each Pole License will be from the effective date through the completion of the term of the MLA or the earlier termination of the MLA, whichever occurs first;
- The annual License Fee per City-owned pole is \$2,000 in 2018. The License Fee will automatically escalate by 3 percent each year;
- If fiber-optics are installed to support small cell connectivity, the MLA includes an Indefeasible Right of Use (IRU) clause that would grant to the City up to six dedicated fiber optic strands exclusively for municipal use;
- ExteNet must work in good faith with City Staff to ensure coexistence with other City wireless

facilities, such as public Wi-Fi and installed lighting equipment; and

- The MLA includes aesthetic requirements, design guidelines, and a public input process for residential neighborhoods and sensitive populations.

Staff is working to support ExteNet in a cooperative manner in order to deliver enhanced wireless services and benefits to the community. The benefits will include increased cellular phone and data capacity and bandwidth, while minimizing aesthetic impacts and visual clutter.

Current Agency Policies

- Advance projects and programs promoting sustainable economic development, including transforming San Leandro into a center for innovation.
- Maintain and enhance San Leandro's infrastructure.

Previous Council Actions

- At the September 17, 2018 City Council meeting, the Council discussed the proposed agreements and referred the issue to the City Council Facilities and Transportation Committee for further review.

Committee Review and Actions

- Informational presentation at the March 1, 2017 Facilities and Transportation Committee meeting.
- Informational presentation at the November 14, 2018 Facilities and Transportation Committee meeting. The draft MLA was subsequently modified to incorporate changes designed to address questions and concerns raised by the Committee, including: a 5-year term structure rather than the previously proposed 10-year structure; indemnification for the City against any damages relating to radiofrequency (RF) emissions; codified methods to prevent monopoly behavior among providers; and stronger protections for City wireless infrastructure.

Applicable General Plan Policies

- Policy CSF-4.1 Telecommunications. Collaborate with telecommunication service providers, the business community, and investors to foster access to emerging information and communication technology.

Environmental Review

Pursuant to the California Environmental Quality Act of 1970, Public Resources Code §21000, et seq., as amended and implementing State CEQA Guidelines, Title 14, Chapter 3 of the California Code of Regulations (collectively, "CEQA"), the adoption of a MLA is not considered a "project" pursuant to CEQA Guidelines Section 15378 and Public Resources Code Section 21065. The adoption of this type of an agreement is not the activity that may cause a direct or reasonably foreseeable indirect physical change to the environment. In the alternative, the MLA is exempt pursuant to Section 15061(b)(3) "Review for Exemptions" of the CEQA Guidelines in that there is no potential that the agreement may have a significant effect on the environment. Moreover, any site-

specific future projects subject to the MLA would necessitate further environmental review on a case by case basis. Accordingly, no further environmental review is required.

Legal Analysis

The City Attorney's Office worked with the Engineering & Transportation Department and the Information Technology Division to negotiate and draft the MLA. The City Attorney's office will review each Pole License form and associated permit application materials prior to the City Manager's approval.

Fiscal Impacts

Processing charges for staff will be assessed according to the MLA. Schedule A-4 of the MLA prescribes an annual License Fee for Pole Licenses with an automatic yearly escalator. Schedule A-4 also prescribes a Default Fee Schedule for various violations of the MLA. The MLA requires the Licensee to post a Security Deposit to guarantee the Licensee's performance.

Budget Authority

No City funds will be expended to support this Program.

Attachment to Related Legislative Files

- Master License Agreement for Small Cell Pole Attachment Installation between the City of San Leandro and ExteNet Systems (California) LLC.

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