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Staff Report for a City of San Leandro City Council Resolution to Approve a Master License Agreement with Verizon Wireless for Small Cell Pole Attachment Installations and Approving and Authorizing the City Manager to Enter Substantively Similar Agreements with Other Providers

SUMMARY AND RECOMMENDATIONS

Small cell antenna installations allow wireless infrastructure and wireless service providers to attach cellular antennas to existing infrastructure, such as City-owned streetlights and similar City-owned utility poles. Staff negotiated a Master License Agreement (MLA) with Verizon Wireless to govern the installation of small cells on City poles in the Public Right-of-Way. Staff recommends the City Council approve a Resolution authorizing the City Manager to execute the Master License Agreement with Verizon Wireless and authorize the City Manager to execute future Master License Agreements under the same substantive terms with other providers.

BACKGROUND

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 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 streetlights and similar municipal vertical assets are ideal for cost effective installations. Wireless infrastructure companies build and maintain this "neutral" small cell network infrastructure that they in turn can lease through partnership agreements to wireless service

providers. Some wireless service providers choose to build, maintain, and operate their own small cell infrastructure.

Analysis

Under existing federal and state law, local municipalities have retained certain authority to regulate wireless telecommunications facilities in the public right-of-way. This includes the authority to charge providers attachment and application fees, to regulate the aesthetic qualities of the facilities and the appropriateness of the size and location of equipment within each neighborhood and allow for site-by-site analysis of permit applications.

On September 26, 2018, the FCC adopted regulations that preempt certain local authority over small cell deployments. The order sets rates municipalities can charge, provides strict “shot clock” limits for processing permit applications, and establishes other restrictions on the ability of municipalities to regulate small cell deployments.

On August 12, 2020 the Ninth Circuit Court of Appeals issued a decision in *City of Portland v. Federal Communications Commission* (Case No. 18-72689) that largely upheld the FCC Order, including the safe harbor rate of \$270/pole/year.

Staff has developed a framework within these regulations. The key terms and conditions of the MLA are as follows:

- 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 paying for and obtaining a City-issued Encroachment Permit, prior to becoming effective;
- Verizon must remit a \$4,000 Application Processing Payment to the City to cover Staff and Legal costs;
- The standard term is ten years, with multiple renewals available thereafter;
- The term of each Pole License will be from the effective date through the term of the MLA or the earlier termination of the MLA, whichever occurs first;
- The annual License Fee per City-owned pole is \$270 in 2020 (note: under a “Contingent Event,” such as new legislation that modified, enhances, or somehow changes the FCC Order, the MLA provides that the annual fee will increase to \$1,500 per year);
- License Fees in either case will automatically escalate by 3 percent each year;
- Verizon will work in good faith with Staff to ensure coexistence with other City wireless facilities, such as public Wi-Fi and Climatec-installed lighting equipment;
- Verizon will work in good faith with Staff to negotiate a separate agreement for fiber-optics and/or conduit, if Verizon installs them in the future; and
- The MLA imposes aesthetic requirements, design guidelines, and includes a public input process for adjacent properties.

Given that the Agreement is more beneficial in its current form than previous proposals by Verizon, and that the regulatory landscape, particularly following the Ninth Circuit’s decision, greatly impacts the ability of the City to require additional benefits beyond those which have been agreed to, Staff recommends that the City Council approve a Resolution authorizing the City Manager to execute the

Master License Agreement. The Resolution would also authorize the City Manager to execute Master License Agreements under the same substantive terms with other providers (other than Verizon).

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 January 7, 2019 City Council meeting, the Council approved a template Master License Agreement and Urgency Ordinance to Amend Encroachment Requirements Relating to Small Cell Wireless Telecommunications Facilities to Become Effective Immediately.
- At the December 3, 2018 City Council meeting, the Council approved an MLA with ExteNet Systems.
- At the September 17, 2018 City Council meeting, the Council discussed the proposed small cell agreements with ExteNet and Mobilitie and voted to send the items back to Facilities and Transportation Committee.

Committee Review and Actions

- At the July 8, 2020 City Council Facilities & Transportation Committee meeting, the Committee suggested that more effort be done to promote competition for small cell agreements and to protect against monopolization of City assets. To that effect, Staff has begun earnest discussions with additional cellular providers and, in addition, enhanced language to ensure a given permit will expire after one year of inactivity as a measure to protect against exploitative or monopolistic behavior.
- At the November 11, 2018 Facilities & Transportation Committee meeting, the Committee moved the Agreements to be considered by the full City Council
- Prior informational presentation by Mobilitie at the March 1, 2017 Facilities and Transportation Committee meeting.

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.

Attachment to Resolution

- Master License Agreement between Verizon Wireless and the City of San Leandro (FINAL)

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