



PUBLIC WORKS DEPARTMENT

CITY HALL

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CITY COUNCIL STAFF REPORT

Meeting: October 16, 2018

Subject

Small Cell License Agreement with ExteNet Systems (California) LLC

Recommended Action

Authorize the City Manager to enter into a Small Cell License Agreement with ExteNet Systems (California) LLC

Description

Small Cell Facilities are wireless telecommunication devices that consist of radio receivers, antennas and other associated power and electronics equipment, with a defined maximum size (volume) for all equipment. Small Cell Facilities produce considerably less emissions than typical macro-cell towers, and help to mitigate and manage the use of the wireless frequency spectrum, ensuring residents, public safety officers and visitors have adequate cellular coverage. Small cell facilities are the industry solution to address the growing demand for wireless services.

The City currently has four agreements in place for placement of Small Cell Facilities on City owned street light poles. These four agreements are with Crown Castle Ng West, LLC; Mobilitie, LLC; GTE Mobilnet of California Limited Partnership, d/b/a/ Verizon Wireless; and New Cingular Wireless PCS, LLC, d/b/a AT&T Wireless.

This new agreement allows ExteNet to place their own small cell equipment on the city's street light poles, and has the same basic terms and requirements as the four existing small cell agreements. The different provisions in this small cell agreement, as negotiated by the parties, are an automatic renewal after the 5 year periods, up to the 15 year agreement term; City approval would not be required for modifications to equipment that are consistent with Section 6409 (a) of the Middle Class Tax Relief and Job Creation Act (in compliance with State Law); clarification that leasing to a third party is not considered a transfer of interest; and various changes to improve and strengthen the Indemnity and Insurance and the General Provisions sections of the

City's standard agreement. The substantive terms that were reached with ExteNet (which match those of the other small cell agreements) are as follows:

Term: Three (3) - five (5) year terms for a total of fifteen (15) years. Fifteen years also happens to be the current term of the Verizon Cell Tower Lease for the Civic Center.

Rent: The rent has been set at \$1500 per pole per year. This amount is increased at a 3% annual rate each year.

Rent Adjustment: The rent is adjusted annually. In addition, every five years the rent is adjusted to reflect the highest rent paid by the carrier to any jurisdiction within the County of Santa Clara with the exception of San Jose. Cupertino's rate will equal or exceed the rate of any other City in the County with the exception of San Jose at the start of this License. Every five years the City will have an opportunity to catch up to the market rate if the carrier pays any other City, including the County of Santa Clara a higher rate. Again, the exception is that San Jose is carved out due to its unique circumstances.

Aesthetic Control: The City Engineer retains full control over the design of Small Cells. Thus, the City Engineer will be able to ensure that the aesthetic impact of these Small Cells is minimized. The current intent is to not allow battery back-ups for the Small Cells due to the large size of the batteries. Although this will minimize Small Cell availability during an emergency, it will reduce unsightly batteries on poles or new street furniture in the public rights of way. The agreement with ExteNet has provided a design for these facilities that staff believes is aesthetically suitable, and which is identical to the designs approved for the four existing small cell agreements.

Placement Control: The City Engineer will retain full discretion on which poles may be used for Small Cells. This discretion will be based on safety and aesthetic concerns. The carrier may replace City poles at their own expense following City Engineer approval of the design of the replacement pole. Depictions of the approved designs are attached to the agreement.

There have been a number of attempts, both by Federal and State Officials (FCC Dockets WT 17-79 & 17-84, SB-649, ACR-62), to minimize or remove a City's ability to

regulate aesthetics, placement and permitting for small cell facilities which, in effect, grant wireless service providers permission to place facilities on any locally owned utility poles, streetlights, and other suitable facilities located within the public right-of-way, as well as in other local public spaces such as parks, hospitals and public buildings. To date, most attempts have been blocked at various levels of government. However, the FCC recently released Declaratory Ruling and Order for Dockets 17-79 and 17-84 which could provide backing for further legislative initiatives.

The proposed License Agreement for ExteNet owned small cell facilities on street light poles will help the City to retain some control over the design, placement and aesthetics of small cell facilities. Without this License Agreement, ExteNet only has the option to install small cell facilities on PG&E poles. Current designs for facilities on PG&E poles are more challenging to disguise, and the City has less authority over the designs for these facilities, and there will be fewer alternatives for locating the facilities. Limiting service providers to use only PG&E owned poles could prove to the Federal and State legislatures that cities are not capable of streamlining deployment of small cell facilities, and thus hasten the need to enact legislation that removes all discretion from cities.

Environmental Impact

Installation of small cell facilities on existing street light poles is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15302 and 15303 of the Guidelines for CEQA.

CEQA Guidelines Section 15302 allows for replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. Likewise, the replacement light standard would serve the same purpose as the existing field light standard. Additionally, CEQA Guidelines Section 15303 allows for the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The proposed antennas to be mounted on replacement poles would qualify as minor modifications to an existing pole.

Fiscal Impact

The initial fiscal impact of these licenses will be minimal if the assumption is made that 10 poles will be utilized by ExteNet for their initial build-out. This would result in a

total annual revenue to the City of \$15,000 per year. However it is anticipated that this is the first step in a more significant deployment so the sums could increase over time.

Sustainability Impact

No sustainability impact.

Prepared by: Chad Mosley, City Engineer

Reviewed by: Timm Borden, Director Public Works

Approved for Submission by: Amy Chan, Interim City Manager

Attachments:

A - Small Cell License Agreement between the City Of Cupertino and ExteNet Systems (California) LLC