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MEMORANDUM

DATE: July 13, 2017

TO: MGSA Board of Directors

FROM: Michael S. Frank, Executive Officer

SUBJECT: Approval of and Authorization for the Executive Officer to Execute a Streetlight Master License Agreement for Use of MGSA-Controlled Space on Streetlight Poles with Mobilitie, LLC for a 5 Year Initial and Potential Extension Terms

Recommendation

1. Approve a Streetlight Master License Agreement (“SMLA”) with Mobilitie, LLC for a 5 year initial term and potential extension terms to allow Mobilitie to access and use MGSA-controlled spaces on streetlight poles for the purpose of providing communication services; and
2. Delegate to the Executive Officer the authority to execute on behalf of the MGSA any documents necessary to administer the SMLA and non-substantive modifications to the SMLA that may be required and approved by MGSA’s legal counsel.

NOTE: This SMLA, and approval thereof does not authorize any specific installation of facilities by Mobilitie. Instead, the SMLA sets forth the general terms and conditions applicable to such future installations that may be approved by local Marin jurisdictions and establishes the process and requirements that the MGSA will follow.

Background

Over the past nine months, the MGSA has been contacted by two wireless communications service providers which have expressed an interest in accessing and using MGSA-controlled spaces on streetlight poles for the purpose of installing wireless antennas and related infrastructure. Wireless communications companies are experiencing increasing demand for fourth generation (“4G”) wireless communications services and are expanding their wireless

antenna networks to improve both broadband facilities' capacity and coverage in Marin County.

Generally, under federal law, and subject to certain conditions protecting local jurisdictions' public rights-of-way management and compensation authority and land use authority, local jurisdictions cannot prohibit fiber and wireless communication facilities from gaining access to the public rights of-way and utilities infrastructure. The extent to which streetlights fall into these requirement is less clear. Jurisdictions can, however, establish reasonable rates, terms and conditions of access to infrastructure in the public rights of-way, including adopting rules and regulations relating to time, place and manner of attachment to that infrastructure.

Telecommunications law relating to pole attachments, both at the federal and State level, is in a state of flux, and further changes are highly likely. Marin County is somewhat unique in that the Joint Powers Authority, MGSA, owns and controls most of the streetlights within the County. PG&E owns and controls the utility poles in the County. The extent to which federal and State law in this realm applies to MGSA is unclear. Nevertheless, MGSA, has determined that it wants to allow such infrastructure where approved and permitted by a local jurisdiction.

MGSA has developed a SMLA to address the interest of wireless communication service providers in accessing and using MGSA-controlled spaces on streetlight poles for the purpose of installing wireless antennas and related infrastructure. In addition to the SMLA, wireless communication and other telecommunications facilities are subject to the requirements of local municipal and county codes. For instance, they must still apply for permits from the relevant local jurisdiction.

Discussion

As noted above, the SMLA sets the essential terms and conditions governing the deployment of wireless antennas and enables current and new service providers to address coverage and capacity issues related to high-speed mobile broadband service in Marin County and its jurisdictions.

Staff recommends that the MGSA Board approve the SMLA with Mobilitie, which includes the following key terms and conditions:

- **Term** - The initial term of the SMLA is five (5) years, and there is a right to extend the term indefinitely for additional five (5) year terms.
- **Termination** - The SMLA may be terminated as follows:
 - **Termination for Cause** - MGSA may terminate for cause upon ten (10) days written notice. A termination for cause means: (a) Mobilitie has failed to cure a material default; (b) the CPUC, the FCC or other agency exercising jurisdiction

revoked Mobilitie’s authorization to operate the Equipment; (c) Mobilitie’s authority to do business in California has terminated; or (d) bankruptcy.

- Termination Without Cause - The SMLA may be terminated without cause by either Party, with six months’ notice, prior to the SMLA’s five-year renewal. During the five-year term of the SMLA, Mobilitie may terminate its right to operate its Equipment on any individual pole with thirty days’ notice.
- Termination For Public Necessity - MGSA may terminate the use of any individual pole for public health or safety reasons but must use its best efforts to find a site to relocate the equipment.
- **Application Process** - The SMLA lays out a process to facilitate efficiency, ensure that MGSA knows what equipment is located on what poles, and allow for an evaluation of the safety of the proposed equipment. A series of forms have been developed and are attached as Exhibits to the SMLA. The following processes are utilized:
 - Preauthorization - For administrative, visual, and potential safety reasons, it is MGSA’s preference that only one carrier be located on a streetlight pole. To ensure that multiple carriers are not working on applications for the same poles, a preauthorization process has been developed. Once a pole is preauthorized by MGSA, application to the local jurisdiction and preparation of application to MGSA can proceed. A Preauthorization is deemed revoked if there is no activity by Mobilitie within sixty days.
 - Request and Authorization - Once preauthorized, an application may be submitted for use of a pole. The application must include the following:
 - ✓ Planning Permits and authorizations from the local jurisdiction;
 - ✓ A letter from MGSA’s Electrical Contractor with their recommendation for approval, approval with conditions, or denial with an explanation;
 - ✓ List of equipment to be attached to each pole including full construction drawings, location of power and fiber, and product specifications;
 - ✓ Report by a licensed engineer demonstrating that each pole can safely support the weight and wind loading of the proposed equipment, and the total number of watts on each pole and cumulative number of watts including other systems placed within 100 feet of each pole are safe for human exposure;

- ✓ A letter from a licensed engineering firm opining that plans do not pose any safety concerns;
- ✓ Appropriate fees.
- **Co-Location** - MGSA maintains the right to decide if more than one carrier can locate on any individual pole. To the extent MGSA approves multiple carriers on one pole, the licensees are required to coordinate their activities with their competitors.
- **Fees** - The SMLA lays out a series of fees. Aside from the Master License Agreement Fee, the other two fees escalate 3% annually. The fees outlined in the SMLA are as follows:
 - Master License Agreement Fee - This is a one-time \$15,000 agreement development and processing fee.
 - Per-Pole Processing Fee - This is a per-pole processing fee of \$500 for each streetlight pole going through the application or equipment change process.
 - Annual Per-Pole Fee - During the term of the Agreement, Mobilitie shall pay an annual fee of \$1,200.00 for each streetlight pole to which Mobilitie attaches Equipment. If more than one carrier is utilizing Mobilitie’s equipment, a per-pole fee would apply to each carrier.

At this point in time, it is unclear how many applications will be submitted by carriers as well as how many will make their way through the local planning and encroachment processes. As a result, it is difficult to estimate the amount of revenue to be generated by this SMLA. Staff is recommending that after approximately six months, staff return to the MGSA Board with a recommendation for any sharing of revenue with the local jurisdiction permitting the Equipment. In the interim, any fee revenue would remain with MGSA.

Resource Impact

This SMLA, along with any others approved, represents an increased work load for MGSA. Staff will monitor as the program moves forward to see if any additional contract staff resources are needed.

Attachment

1. Draft Streetlight Master License Agreement with Mobilitie, LLC.
2. Resolution #2017 – 08 titled, “Approving the Streetlight Master License Agreement for Use of MGSA-Controlled Space on Streetlight Poles by Mobilitie, LLC.”