

0150-10089-0001

TRANSMITTAL

TO
Marcie L. Edwards, General Manager
Department of Water and Power

DATE
OCT 28 2015

COUNCIL FILE NO.

FROM
The Mayor

COUNCIL DISTRICT

SECONDARY LAND USE MASTER LICENSE AND SITE LICENSE AGREEMENT

Approved and transmitted for further processing including Council consideration.
See the City Administrative Officer report attached.

MAYOR



MAS.RR:06160007T

CAO 649-d

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: October 27, 2015

CAO File No. 0150-10089-0001

Council File No.

Council District:

To: The Mayor

From: Miguel A. Santana, City Administrative Officer



Reference: Communication from the Department of Water and Power dated July 14, 2015; referred by the Mayor for report on July 27, 2015

Subject: **SECONDARY LAND USE MASTER LICENSE AND SITE LICENSE AGREEMENT**

SUMMARY

The Department of Water and Power (DWP; Department) requests approval of a proposed resolution that (1) implements a Master License Agreement (MLA) and Site License Agreement (SLA) for the installation of cellular telecommunication antennas on DWP owned and controlled land and (2) delegates City Council authority to the DWP General Manager allowing for the execution of four MLAs and associated SLAs without further City Council approval. Current license holders that are anticipated to enter a proposed MLA and SLA include AT&T, T-Mobile International AG, Verizon, and Sprint Corporation.

The proposed MLA and SLA will modify the current five year license structure by providing an initial term of five years with five options of five years each, allowing for up to a 30 year term. Each licensee will provide written notice to DWP six months prior to a term expiring if an extension is requested. DWP will review each request and approve the extension provided that (i) the licensee is in good standing, and (ii) the licensee is complying with all terms and conditions of the MLA and SLA. This proposed structure is consistent with similar contracts executed by the California Department of Transportation (CalTrans).

Additional aspects of the proposed MLA and SLA consist of updates to certain contracting provisions including the license fee, deposit amounts, insurance requirements, and notice for termination. Background information is provided in the Appendix along with a table comparing the current license agreement structure and the proposed MLA and SLA.

As required by Charter Section 607, DWP will evaluate and determine if a site License Fee should be adjusted at the end of every five year term. In no event shall the fee for any extension period be less than the prior year fee.

Pursuant to Charter Section 605(b), the DWP Board of Commissioners finds that (1) the property to be licensed is not presently needed for DWP purposes and (2) the grant of the license will not interfere with DWP purposes.

In accordance with Charter Section 606, Council approval is necessary for entering into license agreements that exceed five years. The City Attorney has approved the proposed resolution as to form and legality.

RECOMMENDATIONS

That the Mayor:

1. Approve the proposed resolution authorizing the DWP to execute a Master License Agreement (MLA) and related Site License Agreement (SLA) with AT&T, T-Mobile International AG, Verizon, and Sprint Corporation related to the installation of cellular telecommunications antennas on DWP property that (i) provides an initial contract term of five years along with five, five year extension options, allowing for a total term of up to 30 years and (ii) establishes revised contracting provisions; and,
2. Return the proposed resolution and agreement to the Department for further processing, including Council consideration.

FISCAL IMPACT STATEMENT

Approval of the proposed resolution is anticipated to result in administrative cost reductions for the Water Revenue and Power Revenue Funds. Approval of the proposed resolution will not impact the City General Fund. The proposed Agreement complies with the Department's adopted Financial Policies.

TIME LIMIT FOR COUNCIL ACTION

Pursuant to Charter Section 606, unless Council takes action disapproving a contract that is longer than five years within 30 days after submission to Council, the contract will be deemed approved.

APPENDIX

BACKGROUND

DWP currently utilizes a licensing agreement to permit the use of DWP land with a term not to exceed 5-years, pursuant to City Charter Section 606, with a requirement to competitively-bid out the site at the end of the 5-year term. Total annual revenue generated from 52 license agreements is approximately \$1.5 million.

Following the release of an independent consulting report in 2010 on secondary land use, the Department initiated the process to update the cellular telecommunications licensing structure. The major concerns impacting the restructure include:

- (1) Maintain water and power service - ensure that DWP maintains safe and reliable water and power service with the licensing of properties;
- (2) Increase licensing revenue - enhance secondary land use revenue through various approved uses including cellular telecommunications; and,
- (3) Reduce internal costs - improve the licensing structure to reduce internal costs while making DWP a more attractive business partner.

The Department met with three large cellular Telecom carriers which are licensees for their comments. Licensees asserted that significant investments of time, effort, and capital ranging from \$90,000 to \$125,000 are spent to identify a suitable location, perform engineering, and obtain permits, complete testing, and installation of a monopole antenna site. It is claimed by licensees that the current five year license provides an insufficient term to amortize their investment costs. Furthermore, the administrative process necessary for issuing a new license every five years is burdensome and costly for the Department as well as the licensee. Accordingly, both the licensees and the DWP want to enter into agreements with longer terms that can reduce the frequency of competitive bidding processes and save on administrative costs.

DWP officials assert that approval the proposed MLA and SLA will allow the Department to address the three major concerns described above including (1) maintaining water and power service, (2) increasing licensing revenue, and (3) reducing internal costs.

The following is a table comparing the current telecommunication license agreement structure and the proposed MLA/SLA.

Comparison of Terms

Subject	Current Telecom License Agreement	Master License Agreement (MLA)/Site License Agreement (SLA)
Term	Up to five years	Five years
Options to Renew	None	Five, five-year options per SLA
Bidding Process	Only renewals	All (new opportunities and renewals)
Application Fee	\$1,500 per application	\$1,500 per application (subject to change)
License Fee	Subject to \$24,000 minimum per year on new opportunities and result of the bidding process on renewals	Subject to minimum bid and/or result of the bidding process
Market Rate Adjustment	Not Applicable	Every 5 years
Annual Rate Adjustment	5%	5%
Change Out Fee	\$4,000 per change out application	\$4,000 per change out application (subject to change)
Access Fee	\$1,000 per access on regular business hours and \$4,500 on weekend, holidays, and nights	\$1,000 per access on regular business hours and \$4,500 on weekend, holidays, and nights (subject to change)
Tower Work Fee	\$4,000 per day	\$4,000 per day (subject to change)
Security Deposit	Fifth year's license fee	Fifth year's license fee
Restoration Deposit	Fifth year's license fee	\$10,000 per MLA
Revolving Account Deposit	\$5,000 per license	\$10,000 per MLA
Insurance Requirement	Typically \$1,000,000 is the required threshold) per license agreement	\$2,000,000 threshold per MLA
Indemnification	No change	No change
Required Permits	Conditional Use Permit, Building Permit, FAA (if within FAA jurisdiction)	Conditional Use Permit, Building Permit, FAA (if within FAA jurisdiction), Storm Water, Environmental Impact Report
Approving Authority	General Manager and/or Board	Board and Council
Termination Notice	30 days to 180 days	90 days
Default and Remedies Section	None	Yes
Estoppel Certificate	None	Yes