



City of Arts & Innovation

City Council Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL DATE: DECEMBER 11, 2018

FROM: RIVERSIDE PUBLIC UTILITIES WARDS: ALL

SUBJECT: MASTER LICENSE AGREEMENT (MLA) FOR THE INSTALLATION OF SMALL CELL WIRELESS ANTENNAS AND EQUIPMENT ONTO CITY STREETLIGHTS AND WOOD UTILITY POLES AT MULTIPLE LOCATIONS THROUGHOUT THE CITY

ISSUE:

Approve the Master License Agreement (MLA) allowing communications companies to install small cell wireless antennas and equipment onto city owned streetlights and Riverside Public Utilities (RPU) owned electric utility poles, to facilitate the increasing needs for 5G bandwidth.

RECOMMENDATIONS:

That the City Council:

1. Approve the Master License Agreement (MLA) for attaching small cell wireless antennas and equipment to City owned street lights and wood utility poles, at the rates set forth in the MLA (MLA, Exhibits C-1 and C-2);
2. Authorize the City Manager, or his designee, to execute MLAs for attachments of small cell wireless antennas and equipment to city owned street lights and RPU owned wood utility poles attachments to City facilities under the terms set forth in the MLA; and
3. Approve the additional requirements, outlined in this report, for the street opening permits in order to ensure compliance with Title 20 of the Riverside Municipal Code.

LEGISLATIVE HISTORY:

The City owns, operates and maintains certain electric utility poles and street light poles, easements associated with these structures and public rights-of-ways. The City also owns and operates a municipal electric utility, also known as a “publicly-owned utility” (“POU”).

California law provides that “telegraph or telephone corporations may construct lines of telegraph or telephone lines along and upon any public road or highway, along or across any of the waters or lands within this State, and may erect poles, posts, piers, or abutments for supporting the insulators, wires, and other necessary fixtures of their lines, in such manner and at such points as not to incommode the public use of the road or highway or interrupt the navigation of the

waters.” California law further provides that “municipalities can exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed”, so long as the control is applied to all entities in the same way. (Public Utilities Code sections 7901 and 7901.1.) California law further provides that the City shall allow video service providers that hold a state franchise to install, construct and maintain a network within public rights-of-way. (Public Utilities Code section 5885).

POUs are required to make available space and capacity on the POU’s electric utility poles available for use by communication providers, including cable television corporations and video services providers, and limits the annual fees charged by the POU’s per California State law. (Public Utilities Code sections 9510 et seq.)

In addition, the City wishes to offer nonexclusive access through Master License Agreements (MLA) to City-owned street light poles consistent with all applicable health and safety requirements, including California Public Utilities Commission’s General Order 95. Neither federal nor California law prohibits the City from charging a fee for such access. Such access is currently regulated by the Federal Communications Commission’s Declaratory Ruling and Third Report and Order (WT Docket No. 17-79; WC Docket No. 17-84, also known as the “the FCC Wireless Infrastructure Order” which was issued on September 26, 2018), which clarifies that Sections 253 and 332(c)(7) of the Communications Act applies to state and local regulations of wireless infrastructure deployment, including the identification of specific fee levels, for small wireless facility deployments in the rights-of-way and attached to certain property owned or controlled by state or local government within the rights-of-way, including City-owned street light poles.

Consistent with the FCC’s ruling, fee limits shall be a) a maximum of \$500 for a single up-front application that includes up to 5 Small Wireless Facilities (“SWF”), b) a maximum of \$100 for each SWF beyond 5, and c) a maximum of \$270 per SWF per year for all recurring fees, including any possible ROW access fee or fee for attachment to municipally-owned structures in the ROW. Furthermore, FCC rule compliance specifics include established timelines of a) 60 days (previously 90 days) for collocation of SWF on pre-existing structures, b) 90 days (previously 150 days) for SWF new construction of facilities, and c) “Batched Applications” (i.e., 1 application for multiple SWF’s, or multiple applications submitted simultaneously) do NOT extend shot clocks. In other words, Batched Applications for SWF must be processed within 60 or 90 days depending on whether pre-existing or new construction. If Batched Application includes both pre-existing structure and new construction, then the longer shot clock applies. Finally, the ruling states that aesthetic requirements are not preempted if they are a) reasonable, b) no more burdensome than those applied to other types of infrastructure deployments, and c) published in advance.

The MLA, along with applicable law, establishes a framework under which a Licensee will have access to certain City Facilities and City-provided electrical power for attachment of various wireline and wireless facilities, and (if applicable) the construction of facilities within City rights-of-way.

Riverside Municipal Code section 19.530 et seq. is meant to ensure compatibility between wireless telecommunication facilities and adjacent land uses and properties and to avoid any impacts associated with such uses, while encouraging the orderly development of wireless communication infrastructure within the City of Riverside to serve its residents and businesses.

A wireless telecommunications facility is permitted to be sited in the City of Riverside subject to applicable requirements imposed by this chapter, which may include a design review process, a conditional use permit application process, or both. These processes are intended to permit wireless telecommunications facilities that blend with their existing surroundings and do not

negatively impact the environment, historic properties, or public safety. RMC 19.530.030 specifically exempts “Wireless telecommunications facilities on public properties, as well as within the public rights-of-way or within easements” and is thus not applicable here.

BACKGROUND:

On December 13, 2011, City Council approved a similar agreement for utility poles which was brought forward in response to California State Assembly Bill (AB) 1027 signed into law on October 8, 2011 by Governor. That law provided that each POU’s annual fee charged for the use of utility poles shall not exceed “the annual costs of ownership of the pole multiplied by 7.45% of the total usable space of that pole”. The annual costs of ownership include capital, operation, and maintenance, depreciation costs and other factors. Applying the new formula resulted in an annual pole attachment fee of \$23.50.

Due to the increasing needs for 5G bandwidth, the City has received numerous inquiries from communications companies to allow the installation of small cell wireless antennas and equipment onto city-owned assets, such as streetlights and traffic signals. Those companies have also inquired about attaching to RPU-owned assets like wood utility poles. California law provides that telecom companies be provided access to public rights-of-way for their lines and equipment, and in an effort to minimize the number of poles and structures, industry practice is to work with those companies and lease space on existing structures for a fee. Allowing and controlling attachments on city-owned assets is also in the best interest of the City to ensure that the proliferation of small cell equipment does not increase risk to the public or to the reliability of systems, while also addressing the impact of aesthetics.

DISCUSSION:

In early 2017, RPU began to study the options available, including best practices of other cities and utilities. On August 14, 2017, the City Manager’s office presented a Pole Attachment Program to the Land Use Committee. Immediately following that presentation, RPU began to lead an effort to coordinate with telecom companies and other City departments to develop a comprehensive program addressing the needs of both the City and the telecom companies. The goal was to clarify the City’s current practices regarding small cell antennas, proposing new rules and standards to accommodate the anticipated influx of company requests for attachment accommodations on streetlights, utility poles, buildings, etc. The City was also contacted by an outside company that offered to manage small cell antenna and equipment attachments on city-owned assets in return for a share of lease revenue.

Staff identified a need for a suitable comprehensive Master License Agreement (MLA), including policies and procedures that would be required for any attachment to City or Utility owned street lights and utility poles. Rates and rules for small cell attachments to City-owned assets, such as streetlights and traffic signals, have recently been established by the Federal Communications Commission (FCC 18-133) and reflected in the MLA Exhibits C-1 and C-2 to be adopted by City Council.

To ensure that wireless antennas comply with Title 20 (Cultural Resources), staff recommends additional requirements be added for any street opening permit within a Historic District or directly adjacent to a Cultural Resource. The additional street opening requirements would include:

- I. Co-location will be required as follows:

- a. Co-locate small wireless antennas and equipment on existing street light or utility pole; and
 - b. Incorporate equipment into the pole and attachment.
- II. If the requirement to attach to an existing street light or utility pole cannot be accomplished due to pole integrity, a like-for-like pole replacement shall be proposed.
 - III. If co-location or a like-for-like pole replacement is not possible, locate a minimum of 100 feet off or away from any Cultural Resource.
 - IV. Should the applicant not be able to comply with the above and installation of a new monopole in a Historic District is pursued, the appropriate California Environmental Quality Act analysis will be required.

FISCAL IMPACT:

Upon execution of the Master License Agreement (MLA) by each interested communication provider, a company would pay a one-time processing fee of \$67, and an ongoing annual license fee for each antenna/small cell attachment; in compliance with FCC 18-133 and reflected in the MLA through Exhibits C-1 and C-2. All electricity consumed is credited and debited to Electric Account No. 0000510-344265.

Prepared by: Todd L. Jorgenson, Interim Utilities General Manager
Certified as to
availability of funds: Edward Enriquez, Interim Chief Financial Officer/Treasurer
Approved by: Al Zelinka, FAICP, City Manager
Approved as to form: Gary G. Geuss, City Attorney

Attachments: Master License Agreement (MLA)