



Staff Reports

File #: 2097-2019, **Version:** 1

To: Honorable Mayor and Members of City Council

From: Julie B. Lucido, Public Works Director

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TITLE:

Accommodation Agreement for Installation of Verizon Wireless Communications Small Cell Technology Equipment

RECOMMENDED ACTION:

Authorize the City Manager to execute an Accommodation Agreement with GTE Mobilnet of California Limited Partnership, dba Verizon Wireless, which will authorize a pilot program to install small cell wireless communication equipment at 28 locations within the City's street rights-of-way, and establish procedures for review and approval of future small cell applications; and determine that the actions authorized by this item are exempt from CEQA.

DISCUSSION:

Executive Summary

During the October 15, 2019 City Council meeting, a proposed Accommodation Agreement with GTE Mobilnet of California Limited Partnership, dba Verizon Wireless ("Verizon") was presented for approval. The essential terms of that Accommodation Agreement would have authorized Verizon to install small cell wireless communication equipment at 32 specified locations ("Pilot Program Sites") within the City's street rights-of-way, required Verizon to test the radio frequency ("RF") emissions from the small cell facilities at each of the Pilot Program Sites to confirm compliance with federal standards established by the Federal Communications Commission ("FCC"), and not allowed Verizon to submit applications to install additional small cell facilities within the City until after Verizon had documented compliance with FCC RF requirements for the Pilot Program Sites to the satisfaction of the City's Public Works Director. The Agreement contemplates that the Pilot Program Period will likely be completed between approximately August 15, 2020, and January 1, 2021.

At the end of the meeting on October 15, 2019, City Council directed staff to negotiate with Verizon to modify the Accommodation Agreement to address four specified concerns: (1) decrease the number of sites in the Pilot Program from 32 to 30, to remove two sites that are near schools; (2) require Verizon to indemnify the City from challenges that may be made regarding the Agreement; (3) extend the timelines for the City's review and approval of applications for installation of future small cell facilities (after the Pilot Program); and (4) clarify the City's authority to select an independent engineer to conduct the post-installation RF testing for the Pilot Program Sites.

During negotiations with City staff, representatives of Verizon agreed to all of the changes to the Accommodation Agreement that were requested by City Council at the October 15 meeting. Additionally, beyond the changes requested by City Council, Verizon agreed to further reduce the number of small cell facilities to be included in the Pilot Program to 28 sites. City staff recommends that City Council approve the Accommodation Agreement, as modified, which is attached to this report as Attachment 1; and Attachment 2 shows the modifications made to the Accommodation Agreement, using redlined format to show the differences between the version presented to Council on October 15 and the version that is recommended for approval on November 5, 2019.

Background

The proposed Accommodation Agreement was initially presented to City Council at the public meeting on October 15, 2019, Item 13.A. The staff report from October 15, 2019 is attached (Attachment 3).

During the meeting, there was a detailed presentation given by City staff and the City's legal and engineering consultants that specialize in wireless communications. In general, the presentation consisted of:

- A summary of relevant state and federal laws which preemptively limit the City's authority to regulate Verizon's right to install small cell antennas and related wireless communication equipment within the City street rights-of-way, including:
 - The City cannot regulate facilities on the basis of RF emissions that comply with FCC regulations.
 - The City cannot expressly prohibit, or have the effect of prohibiting, the provision of personal wireless services (including small cell facilities).
 - The City cannot unreasonably discriminate among providers of functionally equivalent services.
 - The City cannot delay processing applications.
- A summary of the applications submitted by Verizon for the installation of small cell wireless facilities at 54 sites, including Verizon's documented assertion that 22 of the 54 sites are deemed approved by law, as of December 5, 2018, due to the City's failure to timely approve or deny those applications.
- An overview of the terms of the proposed Accommodation Agreement and benefits of the agreement including: it would delay sites identified by the community as of most concern, would require RF testing of the pilot program sites, would reduce the number of sites for initial installation, would incorporate alternative locations and supports, and would provide more City involvement in the design of the sites.
- An overview of the City's Technical and Aesthetic Guidelines for Small Cell Wireless Facilities, which will be applied to all future applications for small cell facilities, including applications by Verizon after the Pilot Program.
- An explanation of RF energy, small cell technology, and the review of findings that the RF exposure from the proposed applications were much lower than the FCC RF standards.
- An overview of the Verizon small cell equipment aesthetic design, and improvements made to the initial designs based on input from City staff and the City's engineering consultant.
- Information regarding public outreach and past community meetings.

- A summary of the benefits to the City and the community of approving the negotiated solutions set forth in the proposed Accommodation Agreement, including: longer review periods than provided by federal law, additional City input on site locations and designs, expanded RF testing to document compliance with federal law, and parameters for the submittal of future applications (after the Pilot Program).

There were 35 speakers during the public comment period primarily focused on RF emissions and concerns for the safety of the technology. An FCC fact sheet regarding RF safety was attached to the October 15, 2019 staff report.

After a number of questions and additional discussion, City Council directed staff to bring back to the next Council meeting, on November 5, 2019, a modified Accommodation Agreement that would: (1) eliminate two sites near schools from the pilot program, (2) include an indemnification clause, (3) extend the timelines for the City's issuance of encroachment permits for the small cell sites, and (4) clarify that the City has the right to approve the independent engineer who will conduct the post-installation radio frequency testing.

Discussion

As documented in the modified Accommodation Agreement (see Attachments 1 and 2), Verizon has agreed to all of the changes requested by City Council at the meeting on October 15, 2019, as well as the removal of two additional sites from the Pilot Program, as summarized below:

- The two sites identified by the City Council on October 15 have been removed from the pilot program and placed on the list of delayed sites:
 - Removed from pilot program-1746 Yajome Street (# 29).
 - Removed from pilot program-2447 Old Sonoma (# 53).
- Two additional sites, that were not identified by the City Council on October 15, have been removed from the pilot program and placed on the list of delayed sites:
 - Removed from pilot program-3898 Oxford Street (# 2).
 - Removed from pilot program-1100 5th Street (# 43).
- An indemnification clause has been added to the Accommodation Agreement. This also explicitly incorporates indemnity clauses that are already included in the 2017 Master License Agreement, and the encroachment permits that will apply to each small cell site.
- The time for the City to review each application for new small cell facilities has been extended by 15 days. The Agreement has been clarified regarding Verizon's obligation to submit (or re-submit) an application for each small cell facility after the Pilot Program.
- Under the Agreement, the City has the right to: (1) approve or reject the independent engineer hired by Verizon to evaluate and test RF emissions from each small cell site in the Pilot Program; (2) select and hire a separate independent engineer, at Verizon's cost, to peer review the evaluation and testing conducted by Verizon; and (3) select and hire a separate independent engineer to conduct additional testing of RF emissions from the small cell facilities.

FINANCIAL IMPACTS:

Approval of the Accommodation Agreement does not impact the General Fund. Under the previously

approved master license agreement, in exchange for use of various City-owned infrastructure for the installation of small cell equipment, Verizon would pay the City an annual fee of \$100 for each location which would be adjusted annually at a rate of 2% per year. If agreed to by both parties, Verizon could pay the City in a form of a credit for wireless services.

CEQA:

City staff recommends that the City Council determine that the Recommended Action is exempt from CEQA pursuant to CEQA Guidelines Section 15303, which exempts construction and location of limited numbers of new, small facilities or structures and installation of small new equipment and facilities in small structures.

DOCUMENTS ATTACHED:

ATCH 1 - Accommodation Agreement

ATCH 2 - Changes to October 15, 2019 Proposed Accommodation Agreement

ATCH 3 - October 15, 2019 Agenda Item 13.A Staff Report

ATCH 4 - Map of Proposed Pilot Project Locations (28)

ATCH 5 - Map of Applications Received (54)

NOTIFICATION:

None.