



AGENDA REPORT

Meeting Date: April 11, 2013

Item Number: E-2

To: Honorable Mayor & City Council

From: Mahdi Aluzri, Assistant City Manager
David Gustavson, Director of Public Works & Transportation
Anne Garvey-Zaworski, Principal Civil Engineer

Subject: APPROVAL OF A MASTER LICENSE AGREEMENT FOR INSTALLATION AND USE OF TELECOMMUNICATIONS ANTENNAS AND SUPPORTING EQUIPMENT ON LIGHT STANDARDS AND POLES

Exhibits:

1. Master License Agreement
2. Categorical Exemption
3. Final DAS Node Location Map
4. Hammett & Edison Inc. Noise Report
5. Hammett & Edison Inc. Radio Frequency (RF) Report
6. FCC Consumer Facts on Human Exposure to RF Fields
7. FCC OET Questions and Answers about Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields
8. AT&T oDAS FAQ and Resident Notification Letter
9. Hammett & Edison Inc.'s Cell Tower Health and Safety Questions and Answers
10. Letter From Resident Ken Goldman dated 1-14-2013 and City's Response dated March 5, 2013
11. Table Identifying Proposed Equipment
12. Table Identifying Antenna Type and Location on Pole

RECOMMENDATION

Staff recommends that the City Council move to approve a Master License Agreement (MLA) between the City of Beverly Hills and "AT&T Mobility" for installation and usage of telecommunication antennas and supporting equipment on light standards and poles within the City of Beverly Hills.

INTRODUCTION

AT&T Mobility is proposing to upgrade the City of Beverly Hills' wireless service and coverage by installing a Distributed Antenna System (DAS) throughout the City. This project was initially spearheaded by the City's Public Safety staff (specifically the Police

Department) to increase the performance of their public safety mobile computers and will achieve this goal together with increasing the performance of all other AT&T wireless devices owned and operated throughout the City by residents, businesses and visitors.

The MLA, if approved by Council, will be the vehicle that permits the City to a) issue individual utility/excavation/street use permits for the removal/replacement/installation of seventy-five (75)* subject light/sign/banner poles and b) enforce project conditions that AT&T will have to adhere to during construction and for the life of the agreement including any and all required mitigation measures.

DISCUSSION

The initial proposal for AT&T's project (submitted to the City in May 2010) consisted of 21 DAS node locations and 9 MACRO site locations all connected to a common source via fiber that provides the wireless service. (A MACRO site is much larger and usually takes the form of a fake tree or tall building antennae attachment and achieves the coverage of approximately 7 DAS locations.) The City has already approved 5 MACRO permanent sites on City-owned property (Former Chamber Building at 239 S. Beverly Drive, Fire Stations 2 and 3, Police Department (PD) at 464 N. Rexford Drive and Reservoir 3B property at 1201 Coldwater Cañon Drive) and 1 MACRO temporary site at Greystone. There are also at least three MACRO sites on privately-owned buildings that have already been reviewed/approved by Community Development staff at 9045 & 9301 Wilshire Boulevard and 490 Foothill Road.

The MACRO locations proposed by AT&T in 2010 were determined to be too intrusive and staff working with AT&T developed a revised project that expanded the DAS locations to 76 nodes to complement the existing five locations (on City-owned property described above) in providing the desired coverage. In order to conduct a comprehensive review of AT&T's proposal, the City engaged the services of Psomas engineering to provide site evaluation of DAS node sites at all of the proposed 76* locations throughout the City. (All City costs related to this project were paid for by AT&T). Psomas completed their evaluations on June 7, 2012. During the evaluation period; AT&T staff participated in a number of site walks and exhibited flexibility in moving/relocating those antenna/cabinets that Psomas expressed aesthetic/noise concerns about. Additionally, for the last seven months, AT&T staff personnel have been working closely with City's IT, PD and Engineering staff to include "camera-ready" features on fourteen of the proposed DAS node street light/banner/free-standing metal poles; eleven of which were specifically selected by PD and the other three (due to their proximity to our reservoir sites) by Engineering.

Consequently the final DAS node location map which is attached to this Agenda Report as "Exhibit No. 3" identifies the most optimum, aesthetically pleasing and least obtrusive node locations within the City.

**76 oDAS Node Sites = Total 78 Poles of which only 75 Poles are under city ownership and hence subject to MLA. The remaining 3 poles are JPA Utility Poles (2) and New AT&T-owned Free-Standing Metal Pole (1)*

AGREEMENT PROVISIONS

The permitting vehicle recommended by the City Attorney for this project was a Master License Agreement (MLA) between the City and AT&T. The primary provisions of this agreement are:

The initial term of this MLA shall be for eight (8) years commencing ninety (90) days after approval by City Council of this Agreement and at which time license fee payments shall commence.

The term may be extended at the discretion of the City Council for two (2) separate and successive five (5) year periods. The MLA also includes a provision for a meet and confer process on the seventh anniversary of the agreement and the City may require a report and information on the feasibility of replacing the antennas or cabinets with less obtrusive equipment.

If a new license has not been executed by the City and AT&T by the expiration date, then the City shall request that the Licensee remove the antennas and related equipment.

AT&T shall pay to the City an annual license fee for each City-owned pole upon which AT&T installs antennas within the City limits as indicated in the fiscal section of this report.

The light standards will be removed and replaced by AT&T at their sole expense and the replacement poles (other than the three excluded poles) will be owned by the City.

Individual excavation permits will be issued for each pole and cabinet installation.

Additional consulting resources paid for by AT&T for the review of the permit applications and subsequent inspection will be requested by the City.

A 10% late payment penalty shall be assessed by the City if the lease payment is not made within 10 days of the due date.

Project shall be built in accordance with the project description included with the Master License Agreement. Minor deviation may be allowed, subject to approval by the City.

DESCRIPTION OF PROPOSED EQUIPMENT:

The 76 DAS nodes which have ultimately been determined as vital by AT&T to the success of this system will be located within the public ROW on replacement poles as identified in the Table in Exhibit #11 and on Exhibit #3 Map of this report.

When the streetlight poles are replaced, the light arm will remain at its existing height. All of the streetlight and street sign poles are being replaced with pole heights anywhere from 0' to 18.5 feet higher than the existing pole. Attachment No. 1 to the Project Description (PD) shows all 76 proposed DAS node locations. The DAS nodes consist of two/three antennas that are 48 inches high, 6 inches deep and 12 inches wide and are mounted on replacement poles as indicated in the Table in Exhibit #12 and as depicted in the referenced MLA and PD Attachments. Each of the 76 DAS nodes is supported by

an equipment cabinet. The wireless equipment cabinet dimensions are 23 inches deep by 27 inches wide by 63 inches high. The cabinets will be painted green and can be screened with drought-resistant plant material, where such screening is feasible and selected by the City. AT&T prepared a Noise Report for these new cabinets which the City's consultant Psomas reviewed and approved. AT&T has spent the last year working with the City's consultant Psomas to determine the location of the nodes and cabinets within the right of way. In most instances, the cabinet will be within 20-30 feet of the node (range is 5 to 130 feet).

Five DAS nodes/sites have been identified by AT&T as needing a total of five additional power pedestals as identified in the Table in Exhibit # 11 of this report.

PUBLIC OUTREACH:

On September 20 and 24, 2012, City staff and AT&T presented the proposed DAS Project to members of the Technology and Disaster Communication Systems (DCS) Committees and the Health and Safety Commission, respectively. City staff and AT&T returned to the Health and Safety Commission again on October 22, 2012, to answer additional questions regarding the antennas and cabinets.

On October 31, 2012, one hundred and ten (110) of the City's neighborhood block captains received an email from Sergeant Mader with detailed information and an FAQ (See Exhibit #8 of this report) about the project.

A presentation was made to the Beverly Hills Unified School District Board on January 8, 2013, and on January 10, 2013, a City Hall Workshop encompassing all aspects of the project was held in the Municipal Gallery to which 2,500 residents and property owners within a 150-foot radius of each of the 76 nodes were invited by letter (mailed on December 24; See Exhibit #8). A total of ten residents were in attendance and the questions ranged from a desire to understand the scope of the project and coverage improvements to concerns over Radio Frequency emissions and health hazards. One of the attendees, Mr. Ken Goldman, sent staff and Council the attached letter after attending the workshop and the staff provided a comprehensive response to the issues raised in the letter as outlined in the letter dated March 5, 2013 (Exhibit#10).

During the workshop, staff from the City and AT&T provided responses to the questions and explanation of the technical studies conducted to support compliance with local and federal requirements. In addition there were questions regarding the location of the cabinets and the potential for proliferation by other providers. Specifically there were questions on whether the poles and cabinets could be located in the alleys instead of on the streets.

The alley possibility was investigated; however the potential conflict with the existing alley infrastructure, the existing narrow width of the alleys and the access needs for trash pick-up precluded that alternative. In response to comments received during public outreach and to address those concerns, additional modifications were made to the height of the poles and the location of the cabinets.

On January 17, 2013, in response to questions raised during the September 20 presentation about the possibility of further increasing the proposed wireless coverage footprint, staff returned to the Technology Committee for a final presentation with revisions to the design which resulted in less coverage gaps.

Construction Schedule:

AT&T plans to apply for utility/excavation/street use permits for all 76 sites within six months of approval of attached MLA. Psomas and/or City staff will provide all required permit plan review and construction-related inspection services during the twelve (12) month construction period; services for which the City will be fully reimbursed by AT&T on/before permit application. One of the permit conditions will be that residents/businesses adjacent to each node project location will be provided notice of construction letters, indicating the type of work and its impact on the area at least two weeks prior to commencement of the project.

ENVIRONMENTAL ASSESSMENT

Under Public Utility Commission (PUC) Section 7901.1; utility companies can "access a city's right-of-way in aesthetically benign ways" and the city can "exercise reasonable controls as to time, place and manner" of all installations. (Ninth Circuit: 10.14.2009)

On March 7, 2011, the City's Community Development Department advised that this DAS project qualifies for an exemption from CEQA and that this exemption should be adopted by City Council in conjunction with the approval of this Master License.

Attached is a categorical exemption (Class 1, 2, 3, and 4) prepared by Community Development staff.

FISCAL IMPACT

The proposed annual license fee per pole to be paid by AT&T to the City's General Fund are:

1 – 25 poles -----	\$2,794
25 – 50 poles -----	\$2,450
50 – 100 poles -----	\$2,150
Over 100 poles -----	\$1,700

The above fees to be paid to the City will automatically increase each and every year of this Agreement upon the anniversary of the Commencement Date by the greater of 3% or the percentage increase in the CPI.

Based on the 75 poles that the Master License Agreement covers, the City can anticipate receipt of the following license fees/year upon completion of the project:

25 x \$2,794 = \$69,850
 25 x \$2,450 = \$61,250
 25 x \$2,150 = \$53,750
 \$184,850


 Noel Marquis
 Finance Approval

David Gustavson  for DG
 Approved By