



June 14, 2023

**The Honorable Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton Goodlett Place, Room 244
San Francisco, CA 94102**

***Subject: Request for Approval – 2023 MLAs for Telecoms AT&T, Verizon, ExteNet,
Mobilitie, and Crown Castle***

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) and San Francisco Public Utilities Commission (SFPUC) request that the San Francisco Board of Supervisors authorize the Director of Transportation and SFPUC General Manager to execute 2023 Master License Agreements for AT&T, ExteNet, Verizon, Mobilitie, and Crown Castle.

BACKGROUND

2014 Master License Agreements

In 2014, the SFMTA Board of Directors and SFPUC approved separate Master License Agreements (“2014 MLAs”) for certain telecommunications carriers that elected to sign the 2014 MLAs (“Licensees”) with either the SFMTA, SFPUC or both. The 2014 MLAs established the contractual terms and conditions, and the administrative and review procedures, by which a Licensee could request and the SFMTA or SFPUC would issue pole licenses permitting the Licensee to install cell telephone antennae and equipment (called “Outdoor Distributed Antenna Systems” or “ODAS”) on specific SFMTA or SFPUC poles. The 2014 MLAs also established application fees and annually adjusted rents that a Licensee would pay for a pole license.

The SFMTA Board approved the form 2014 MLA on July 15, 2014 (MTAB Resolution No. 14-121). The SFPUC approved the form 2014 MLA on October 28, 2014 (SFPUC Resolution No. 14-0173).

Four Licensees, Verizon, ExteNet, Mobilitie and AT&T, signed 2014 MLAs with SFMTA, which the SFMTA Board approved. The Licensees’ demand for pole licenses quickly exceeded the SFMTA’s initial demand estimates; the increased revenues from pole licenses made the 2014 MLAs subject to the Board of Supervisors’ approval under Charter section 9.118, which the Board granted for Verizon, ExteNet and Mobilitie on October 26, 2015 (Res. No. 443-15), and for AT&T on August 11, 2016 (Res. No. 352-16).



Four Licensees Verizon, ExteNet, Mobilitie and AT&T, also signed 2014 MLAs with SFPUC for use of SFPUC metal and concrete poles. Those agreements were approved by the Board of Supervisors on December 10, 2014 (Res. No. 463-14), January 28, 2015 (Res. No. 31-15). and December 7, 2016 (Res. No. 534-16)

Pole Licensing for ODAS Installation from 2015 to 2018

Under the 2014 MLAs, City approval to install ODAS on SFMTA and SFPUC poles was a multistep process. Licensees complained that this licensing process was unreasonably cumbersome and time consuming, sometimes taking six to twelve months. The introduction of 5G cellular communications technology (which is faster and has much larger data capacity than 4G technology but requires more antennas) and continually increasing demands for wireless data services intensified the Licensees' complaints.

Changes to Federal Law

In 2018, the Federal Communications Commission (FCC) adopted Order No. FCC 18-133 (FCC Order), effective January 2019, which, among other things, interpreted federal law to limit to cost recovery the amount of fees states and local governments can charge telecommunications carriers for use of their vertical infrastructure in the public right-of-way. On August 12, 2020, the Ninth Circuit Court of Appeal upheld the FCC Order, and on June 28, 2021, the U.S. Supreme Court denied further appeal.

In 2019, in response to the FCC Order, the City streamlined the permitting process by eliminating the requirement that ODAS installations obtain a Public Works permit (Ordinance No. 190-19, amending Public Works Code Article 25), and by consolidating administrative review procedures. The Director of Transportation and SFPUC General Manager also issued Executive Directives to streamline CEQA review for ODAS installations that met preapproved design and site/location standards. In 2020, with legal remedies exhausted, the Licensees demanded that the SFPUC and SFMTA revise their Pole License fees and review procedures to comply with the FCC Order, which is the purpose of the 2023 MLAs.

2023 Master License Agreement

Led by the Mayor's Office Economic and Workforce Development, the City determined that it made sense to have a unified license agreement. The SFMTA and SFPUC have now completed 2023 MLAs with AT&T, Verizon Wireless, ExteNet, Crown Castle, and Mobilitie. The key terms and conditions of the 2023 MLAs are summarized on the following page.



Summary of 2023 MLA Terms and Conditions

The following table summarizes the 2023 MLA’s terms and conditions. Note that all fee amounts listed are listed here use the 2022 rates that the parties negotiated. Those rates are subject to a cost of living increase for 2023, the final adjusted rate is in parentheses.

Term:	12 years, beginning on the Effective Date
Master License Effective Date:	the first day of the month after the date the parties have fully executed this Master License
Pole License Commencement Dates:	for each Pole License, the date the parties have fully executed it
SFMTA Annual License Fee	\$813 (\$864.22 adjusted for 2023)
SFPUC Annual License Fee	\$270 Steel (\$287.01 adjusted for 2023) \$360 Concrete (\$382.68 adjusted for 2023)
Fee Adjustment Due to Cost of Living Increases	License Fee and all other fees set forth in Exhibit C will escalate by 4% on January 1 of each year of the Term, starting on January 1, 2023. If COI increases by 6% or more, then the escalation rate will be the actual COI for the previous year.
Master License Application Fee	\$7,500 (\$7,972.50 adjusted for 2023), to be delivered with Licensee’s signed counterpart of this Master License
Pole License Administrative Fee	\$2,000 (\$2,126.00 adjusted for 2023)
Security Deposit	\$75,000 (\$79,725 adjusted for 2023)

Comparison of the 2014 MLA with the 2023 MLA

1. 2023 MLA Form: The 2023 Master License and the 2014 MLA each: (a) establish the legal relationship and framework under which a Licensee may apply to the SFMTA and SFPUC for a revocable license to use a specific portion of a pole (the Licensed Area) issued under the MLA to install, operate and maintain cell telephone antennas and equipment on SFMTA or SFPUC poles for the transmission and reception of wireless telephone and data communications (the Permitted Use); and, (b) govern the fees, charges, procedures, requirements, and terms and conditions of Pole Licenses. But while the annual license fees charged under the 2023 MLA have been reduced, administrative fees have been increased, and the review process for pole licenses has been streamlined, as discussed below.



2. Pole License Form: The Pole Licenses that the SFMTA and SFPUC will issue under the 2023 MLAs are similar to the Pole Licenses the agencies issued under the 2014 MLAs. Both forms (a) authorize the Licensee to install ODAS on identified poles; (b) specify approved pole location(s) and any site-specific constraints (including replacing the pole if necessary to support the additional equipment); and, (c) grant an exclusive license to the Licensee, subject to the terms and conditions of the MLA.

3. City Use Has Highest Priority: The 2023 MLA preserves and affirms the (a): SFMTA's right to give highest priority to transit operations and other SFMTA needs in the agency's management of its poles; and (b) the SFPUC's right to give the highest priority to use of its poles for streetlighting. The 2023 MLA preserves and affirms the SFMTA's and SFPUC's authority to terminate Pole Licenses upon notice and in an emergency. With regard to the SFMTA, the 2023 MLA also limits poles available to Licensees to Overhead Catenary System support poles that have a limited number of guy wires, while giving the SFMTA the discretion to make available nonstandard pole types (traffic/pedestrian signal poles, certain decorative poles, electrified poles, poles with more than three guy wires) for licensing at a later time and under a different (not yet negotiated) fee schedule. The SFPUC has not allowed the Licensees to obtain Pole Licenses on decorative streetlights poles.

The 2023 MLA expressly provides that the SFMTA and SFPUC have the absolute right in their sole discretion to terminate any or all Pole Licenses if the either agency determines that use of a pole by a Licensee adversely affects or poses a threat to public health and safety, constitutes a public nuisance, interferes with transit operations or streetlighting, or requires City to maintain a pole that is no longer required for City purposes. The 2023 MLA also provides that the City has the right to remove or replace a pole, or remove a Licensees' equipment from any pole where the City determines in its sole judgment is necessary for City purposes.

4. License Application Process: There will be little change from the current Pole License review process. But to comply with the FCC Order, the City's deadlines in the 2023 MLA for reviewing applications for ODAS installation have been shortened to 60 days for existing poles, and 90 days for new poles. The 2023 MLA also includes a new batch reservation program to implement an orderly process for Licensees to reserve and license poles. That program will provide the SFMTA and SFPUC with a better understanding of the demand for poles over the course of each year, and will provide a process for resolving competing license applications when multiple Licensees seek to access to the same pole(s).

5. Administrative Fees: Pole license administrative (application) fees under the 2023 MLA will increase to \$2,000 for 2022 (adjusted for inflation, the 2023 rate is \$2,126) from the current \$800 application fee, to reflect the City's actual staff and administrative costs. Pole license application fees are not fees charged to the public, they are only charged to the Licensees that have signed an MLA.



6. Annual License Fees: License Fees are rent charged for the use of City poles. The 2023 MLA establishes a uniform annual fee schedule and annual due date for such fees for standard pole types, which will eliminate administrative challenges experienced under the 2014 MLA. Under the 2014 MLAs, the SFMTA currently charges approximately \$5,300 per pole per year, and has issued 253 Pole Licenses, generating over \$1.3 million per year in revenue, while the SFPUC currently charges approximately \$5,300 per pole per year, and has issued 578 Pole Licenses, generating over \$3.1 million per year in revenue.

To comply with the FCC order, the fees the City may charge are limited to \$270 per year or the amount of the City's costs, whichever is higher. The SFMTA has determined that its administrative costs to process, review, and maintain the pole licensing program are at least \$813 per pole for 2022; adjusted for inflation as of January 2023, the SFMTA will charge \$864.22 for each licensed pole. The SFPUC has determined that its actual costs do not exceed \$270 per year for steel poles, so the SFPUC license fee for 2023 adjusted for CPI is \$287;10 per steel pole, yet concrete poles will be \$382.68. Annual license fees are not fees charged to the public or that affect the public. Those fees are rent for the use of space on City-owned poles, which have been reduced in the 2023 MLAs in accordance with the FCC Order.

7. Annual Escalation: The 2023 MLA provides an annual fee escalation rate of 4%, or if the Consumer Price Index For All Urban Consumers (CPI-U) Index rate is 6% or more, the escalation is the CPI-U Index rate, to ensure that the annual license fee and one-time fees keep pace with City costs over the term of the 2023 MLAs. Note that listed fees above will be increased in accordance with the 2023 MLA's escalation provisions, retroactive to January 1, 2023.

8. Term: The term of the 2023 MLA is 12 years, and all new Pole Licenses will be subject to the 2023 MLA. The existing 253 SFMTA Pole Licenses and 578 SFPUC Pole Licenses will remain subject to the 2014 MLAs, whose 9 and 12-year terms will expire in 2023-2024 (SFMTA) and 2027 (SFPUC). When the 2014 MLAs expire, those Licensees may apply to renew the Pole Licenses under the 2023 MLAs.

PG&E Metering Requirements

The City anticipates that Licensees will begin licensing new poles in higher numbers once the 2023 MLAs have been approved by the Board of Supervisors. The Licensees' ability to install ODAS may be limited, however, due to new requirements PG&E has imposed on the SFPUC providing power to lights, signals, and other equipment installed on City-owned poles. The SFPUC has been providing electric service to the Licensees' ODAS through Hetch Hetchy Power without requiring meters. But PG&E has amended its Wholesale Distribution Tariff (WDT) to terminate all unmetered loads. This will require the Licensees to obtain retail service from PG&E and install meters.



The City has challenged that new requirement with the Federal Energy Regulatory Commission (FERC), but it will likely take several years for FERC to issue a decision and for PG&E and the City to exhaust all appeals. In the meantime, PG&E's changes to the WDT remain in effect, so the Licensees will need to obtain metered electrical power from PG&E to operate ODAS installed on any newly licensed poles, which may delay ODAS installation. The Licensees and the SFPUC have been in FERC-supervised settlement negotiations for an interim solution while the City's challenge to the amended WDT at FERC is pending.

STAKEHOLDER ENGAGEMENT

Led by the Mayor's Office of Economic and Workforce Development, and assisted by the City Attorney and Department of Technology, the SFMTA and SFPUC directly negotiated the 2023 MLA with Licensees, who are fully aware of the terms and conditions of the 2023 MLA.

ALTERNATIVES CONSIDERED

Refusing Licensees access to SFMTA and SFPUC poles would not accord with federal law and would reduce San Francisco residents and visitors access to cellular telephone and data services provided by ODAS.

FUNDING IMPACT

In accordance with changes in federal law, the fees the SFMTA and SFPUC may charge for licensing poles will be limited under the 2023 MLAs to recovering the agencies' costs for administering the pole licensing program, which will reduce annual revenues to the SFMTA from \$1.3 million to \$220,000-\$330,000 and to SFPUC from \$3.1 million to \$160,000-\$230,000. The existing 2014 MLAs remain in effect and will continue to yield higher revenue until their expiration in 2023-2024 and 2027. Operating funds required for managing the pole licensing program are included in the Facilities and Real Property Management budget under the Division of the Chief Strategy Officer.

SFMTA BOARD AND SFPUC COMMISSION ACTIONS

On April 18, 2023, the SFMTA Board of Directors approved the 2023 MLA as to form, and the MLAs for AT&T, Verizon, ExteNet, Mobilitie, and Crown Castle (MTAB Resolution No. 230418-031).

On March 24, 2023, the SFPUC Commission approved the 2023 MLA as to form and authorized the SFPUC General Manager to execute MLAs upon Board of Supervisors approval. (SFPUC Resolution No. 23-0058).

REQUEST FOR APPROVAL

The SFMTA and SFPUC respectfully request that the Board of Supervisors authorize the Director of Transportation and SFPUC General Manager to enter into MLAs with AT&T, Verizon, ExteNet, Mobilitie, and Crown Castle.



Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey P. Tumlin'.

Jeffrey P. Tumlin
Director of Transportation, SFMTA

A handwritten signature in blue ink, appearing to read 'Dennis J. Herrera'.

Dennis J. Herrera
General Manager, SFPUC