

# **PUBLIC UTILITIES COMMISSION**

City and County of San Francisco

RESOLUTION NO. 23-0058

WHEREAS, The San Francisco Public Utilities Commission (SFPUC), pursuant to San Francisco Charter Section 4.112, has the “exclusive charge of the construction, management, supervision, maintenance, extension, expansion, operation, use and control of all water, clean water and energy supplies and utilities of the City and County of San Francisco (City) as well as the real, personal and financial assets, that are under the Commission's jurisdiction or assigned to the Commission under Section 4.132,” as provided in San Francisco Charter Section 8B121; and

WHEREAS, Under San Francisco Administrative Code Section 25.6, the SFPUC has the authority to determine the intensity of illumination, number and spacing of lighting facilities, and other details necessary to secure satisfactory street lighting; and

WHEREAS, The SFPUC currently owns approximately 30,000 street light poles in San Francisco, many of which are suitable sites for installing equipment to enhance wireless telecommunications services in San Francisco; and

WHEREAS, On April 24, 2012, by Resolution No. 12-0066, this Commission adopted the San Francisco Street Light Pole Use Policy; and

WHEREAS, Resolution No. 12-0066 affirmed that street lighting is the single most important use of SFPUC-owned street light poles; and

WHEREAS, Resolution No. 12-0066 created a consistent framework for reviewing and approving alternate street light pole uses by City agencies, neighborhood associations and community business districts; and

WHEREAS, On October 28, 2014, by Resolution No. 14-0173, this Commission adopted the Street Light License Program, a street light pole licensing program that maximizes the revenue-generating potential of street light pole assets while protecting street light infrastructure; and

WHEREAS, In Resolution 14-0173, this Commission approved the Master License for Outdoor Distributed Antenna System Pole Installation (2014 Master License) and Pole License forms, and authorized the SFPUC General Manager, or his designee, to execute Master Licenses following approval of each Master License by the Board of Supervisors (Board) and Mayor; and to execute Pole Licenses, as amendments to a Master License; and

WHEREAS, In Resolutions 463-14, 031-15, and 309-16, the Board of Supervisors authorized the SFPUC to enter into Master Licenses with five telecommunications providers; and

WHEREAS, In a 2018 decision, the Federal Communications Commission (FCC) determined that the license fee provisions of the 2014 Master Licenses approved by this Commission in Resolution 14-0173, and executed by the General Manager following Board approval, are preempted by federal law; and

WHEREAS, The Ninth Circuit Court of Appeals affirmed the FCC's determination; and

WHEREAS, The SFPUC's licensees have demanded that the SFPUC revise the 2014 Master License to comply with the FCC and the Ninth Circuit Court of Appeals decisions; and

WHEREAS, The Office of Economic and Workforce Development (OEWD) worked with the SFPUC and San Francisco Municipal Transportation Agency (SFMTA) to negotiate a revised single Master License for Outdoor Distributed Antenna System Pole Installation (2023 Master License) and Pole License form for both agencies to use; and

WHEREAS, The SFPUC and SFMTA will obtain approval from the Board to enter into the 2023 Master Licenses with various telecommunications carriers, because the 2023 Master Licenses will have a 12-year term and each license could generate revenues in excess of \$1 million; and

WHEREAS, Approval of the 2023 Master License does not commit the SFPUC or authorize the use of specific poles; and therefore, the approval and execution of the 2023 Master License does not fall with the definition of a "project" under the California Environmental Quality Act (CEQA) Guidelines section 15378; and approval of individual Pole License agreements by the General Manager would not occur until the proposed work is reviewed and the appropriate environmental review under the CEQA is completed; now, therefore, be it

RESOLVED, That this Commission hereby approves the terms and conditions of, and authorizes the SFPUC General Manager to execute the 2023 Master License between the City and County of San Francisco (City), as master licensor, and telecommunications carriers, as master licensees, and approves the form of Pole License attached to the 2023 Master License, both of which are on file with the Commission Secretary; subject to Board approval of each 2023 Master License, pursuant to Charter Section 9.118; and be it

FURTHER RESOLVED, That this Commission hereby authorizes the General Manager to enter into any other amendments or modifications to the 2023 Master License Agreement and any Pole License that the General Manager determines, in consultation with the City Attorney, are in the best interest of the City; do not materially increase the obligations or liabilities of the City or materially diminish the benefits to the City, are necessary or advisable to effectuate the purposes and intent of the 2023 Master License or Pole License or this resolution; and are in compliance with all applicable laws, including the City Charter.

*I hereby certify that the foregoing resolution was adopted by the Public Utilities Commission at its meeting of March 14, 2023.*

  
Secretary, Public Utilities Commission