

1 [Master License Agreements - ExteNet Systems, LLC - Install Wireless Telecommunications  
2 Equipment on SFMTA and SFPUC Poles - Revenues to Exceed \$1,000,000]

3 **Resolution approving execution of Master License Agreements between the City and**  
4 **County of San Francisco and ExteNet Systems, LLC for the installation of wireless**  
5 **telecommunications antennae and equipment on San Francisco Municipal**  
6 **Transportation Agency (SFMTA) and San Francisco Public Utilities Commission**  
7 **(SFPUC) poles, each for a term of 12 years and resulting in revenues that could exceed**  
8 **\$1,000,000 effective upon approval of this Resolution; and affirming the Planning**  
9 **Department's determination under the California Environmental Quality Act.**

10  
11 WHEREAS, Charter, Section 8A.102(b)1, provides that the San Francisco Municipal  
12 Transportation Agency (SFMTA) has "exclusive authority over the acquisition, construction,  
13 management, supervision, maintenance, extension, operation, use, and control of all property,  
14 as well as the real, personal, and financial assets of the Agency; and [has] ... exclusive  
15 authority over contracting, leasing, and purchasing by the Agency"; and

16 WHEREAS, Charter, Section 4.112(d) provides that the SFPUC "shall have charge of  
17 the construction, management, supervision, maintenance, extension, operation, use and  
18 control of all water and energy supplies and utilities of the City as well as the real, personal  
19 and financial assets, which are under the Commission's jurisdiction on the operative date of  
20 this Charter, or assigned pursuant to Section 4.132."; and

21 WHEREAS, The SFMTA owns approximately 10,000 transit poles that are of various  
22 types of construction and are used to support the overhead catenary traction power system  
23 that powers trolley buses and light rail vehicles; and

24 WHEREAS, The SFPUC owns approximately 30,000 streetlight poles in San Francisco  
25 that are of various types of construction and are used to support streetlights; and

1           WHEREAS, During 2012 through 2014, the SFMTA and the SFPUC separately  
2 negotiated Master License Agreements (“2014 MLAs”) with various telecommunications  
3 carriers, which established the terms and conditions that govern licenses issued under the  
4 2014 MLAs and the procedures the licensees were required to follow to install outdoor  
5 distributed antenna system (“ODAS”) equipment on SFMTA and SFPUC poles; and

6           WHEREAS, To date, under four 2014 MLAs the SFMTA has issued 253 pole licenses,  
7 and SFPUC has issued approximately 578 pole licenses; and

8           WHEREAS, To respond to increasing public demand for wireless services,  
9 telecommunications carriers are seeking to install additional ODAS facilities on SFMTA and  
10 SFPUC poles to support 5G services; and

11           WHEREAS, In 2018, the Federal Communications Commission construed federal law  
12 to limit to cost recovery the fees that the City can charge telecommunications carriers for the  
13 use of SFMTA and SFPUC poles for ODAS equipment, which will reduce annual pole license  
14 revenues to the SFMTA from the current \$1,200,000 to \$220,000-\$330,000 and to the SFPUC  
15 from \$3,100,000 to \$160,000-\$230,000, and to impose other conditions, including changes to  
16 licensing procedures, which required the SFMTA and SFPUC to negotiate new terms and  
17 conditions of their Master License Agreements; and

18           WHEREAS, The Mayor’s Office of Economic and Workforce Development led  
19 negotiations with SFMTA and SFPUC and telecommunications carriers for new Master  
20 License Agreements (“2023 MLAs”); and

21           WHEREAS, The 2023 MLAs will increase pole license application fees, decrease  
22 annual license fees, and annually amend fees using an annual escalation rate; and

23           WHEREAS, The 2023 MLAs will provide a common set of contract requirements for the  
24 licensing of City poles by SFMTA and SFPUC; and

25

1           WHEREAS, SFMTA and SFPUC have informally agreed as a matter of policy that the  
2 agreed terms and conditions of the 2023 MLA will be the same for any telecommunications  
3 carrier that elects to sign the 2023 MLA and to install ODAS equipment on SFMTA or SFPUC  
4 poles; and

5           WHEREAS, The existing 253 SFMTA pole licenses and 800 SFPUC pole licenses  
6 issued under the 2014 MLAs will remain subject to the 2014 MLAs until the 2014 MLAs  
7 expire, after which the licensees may apply to have those existing pole licenses reissued  
8 under the 2023 MLA; and

9           WHEREAS, The 2023 MLA provides that the SFMTA and SFPUC have the absolute  
10 right in their sole discretion to terminate any or all pole licenses if either City agency  
11 determines that use of a pole by a telecommunications carrier adversely affects or poses a  
12 threat to public health and safety, constitutes a public nuisance, interferes with transit  
13 operations or streetlighting, or requires the City agency to maintain a pole that is no longer  
14 required for City purposes; and

15           WHEREAS, The 2023 MLA provides that the SFMTA and SFPUC have the right to  
16 remove any SFMTA or SFPUC pole or remove a licensee's equipment from a pole should  
17 either agency determine that removal is necessary for City operations; and

18           WHEREAS, The form 2023 MLA contains a mechanism for issuing individual pole  
19 licenses, each pole license identifying the locations of the licensed pole, describing the ODAS  
20 equipment to be installed on said pole, and establishing conditions or requirements unique to  
21 the used licensed pole for by the licensees to install and maintain ODAS equipment; and

22           WHEREAS, Board of Supervisors' approval of the 2023 MLAs is required under  
23 Charter, Section 9.118(a), because the term for each of the 2023 MLAs will exceed 10 years  
24 and the estimated revenues from each 2023 MLA could exceed \$1,000,000; and

25

1           WHEREAS, ExteNet Systems, LLC have all executed a 2023 MLA, a copy of such  
2           executed MLAs are on file with the Clerk of the Board in File No. 230622; and

3           WHEREAS, On March 24, 2023, the SFMTA, under authority delegated by the  
4           Planning Department, determined that the SFMTA’s approval of the form 2023 MLA and  
5           execution of the 2023 MLAs with ExteNet is not a “project” under the California Environmental  
6           Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections  
7           15060(c) and 15378(b); the approval and execution of those agreements do not commit the  
8           SFMTA to authorize the use of specific poles; ODAS installation under individual pole licenses  
9           will require separate environmental review, and the SFMTA will not approve a pole license  
10          until the proposed installation has been reviewed and the appropriate environmental review  
11          under the CEQA has been completed; and

12          WHEREAS, A copy of the CEQA determination a is file with the Clerk of the Board in  
13          File No. 230622; and

14          WHEREAS, In Resolution No. 23-0058 dated March 14, 2023, the SFPUC determined  
15          that approval of the 2023 MLA does not commit the SFPUC or authorize the use of specific  
16          poles; and therefore, the approval and execution of the 2023 MLA does not fall with the  
17          definition of a “project” under CEQA Guidelines section 15378; and approval of individual pole  
18          licenses by the General Manager would not occur until the proposed work is reviewed and the  
19          appropriate environmental review under the CEQA is completed; and

20          WHEREAS, In Resolution No. 23-0058 the SFPUC approved the terms and conditions  
21          of the 2023 MLA, authorized to seek Board of Supervisors approval of the 2023 MLA, and  
22          further authorized execute the 2023 MLA with licenses upon Board of Supervisors approval;  
23          and

24          WHEREAS, A copy of Resolution No. 23-0058 is on file with the Clerk of the Board in  
25          File No. 230622; now, therefore, be it

1 RESOLVED, That the Board of Supervisors approves the 2023 Master License  
2 Agreement, and Pole Licenses issued under that Agreement, with ExteNet Systems, LLC, a  
3 Delaware Corporation, for a term of 12 years and anticipated revenues exceeding \$1,000,000;  
4 and, be it

5 FURTHER RESOLVED, That the Board of Supervisors authorizes the SFMTA's  
6 Director of Transportation and the SFPUC's General Manager, as applicable, to approve any  
7 additions, amendments or other modifications to Master License Agreements (including,  
8 without limitation, preparation and attachment of, or changes to, any or all of the exhibits and  
9 ancillary agreements) that they, in consultation with the City Attorney, determine are in the  
10 best interest of the City, do not materially increase the obligations or liabilities of the City, or  
11 materially decrease the public benefits accruing to the City, and are necessary or advisable to  
12 complete the transactions contemplated and effectuate the purpose and intent of this  
13 Resolution, such determination to be conclusively evidenced by the execution and delivery by  
14 the SFMTA Director of Transportation or the SFPUC General Manager (as applicable) of any  
15 such documents; and, be it

16 FURTHER RESOLVED, That within thirty (30) days of any additional the Master  
17 Licenses being fully executed by all parties, the SFMTA and SFPUC shall provide final  
18 versions of said Master Licenses to the Clerk of the Board for inclusion into the official file.

19

20 n:\ptc\as2023\1000410\01675425.docx

21

22

23

24

25