MEMORANDUM

TO: Public Works Committee Members

FROM: Carla Cushman, Assistant City Attorney

SUBJECT: Master Service Agreement with Verizon Wireless to allow small cell facilities

DATE: July 11, 2019

On your agenda is approval of a Master License Agreement with CommNet Cellular, Inc. d/b/a Verizon Wireless, concerning small cell facilities within City right of way and on City property. Many months ago, Verizon Wireless (VW) approached the City concerning its desire to improve and expand 4G service to its customers in Rapid City by use of small cell facilities. The small cell facilities are intended to supplement Verizon’s 4G service by placement in high demand areas, such as downtown Rapid City, to provide additional service to users within range of the small cell facility.

The Agreement requires VW to make application to the City to install small cell facilities on City property or on City poles in the right of way. Staff in the Parks and Recreation Department will review applications for facilities in City parks; all other applications will be made to the Public Works Department. Detailed construction plans are required, and if VW wishes to install the small cell facility on an existing City pole, a report from a structural engineer is required to verify that the pole can handle the increased weight and wind load. Section III.h. In the alternative, VW may elect to construct a new City pole at its own cost that can accommodate the weight of the small cell facility. The City approves or denies VW’s request; if the request is approved, the City and VW enter into a contract supplement which permits that facility at that site under the terms of the Agreement.
The Agreement protects the City’s right of way and property by establishing the rights of the City to maintain its property and obligating VW to follow all City protocols and requirements concerning its use of City right of way or property. The Agreement also ensures that VW’s facilities do not generate additional costs to the City other than the cost of staff coordination with VW concerning joint use poles. If the small cell facility or VW damages the City pole in any way, Verizon Wireless must replace the pole at its cost; if the City replaces the pole, it will use a pole purchased by VW. In addition, VW will pay the City a yearly payment of $165 per facility per pole, plus electricity costs (when applicable), an amount which complies with limits set by the FCC.

Small Cell Facilities Background

Small cell facilities are defined by federal regulations as wireless facilities which are generally less than 50 feet in height, include an antenna that is less than 3 cubic feet in volume and other equipment less than 28 cubic feet in volume, and comply with federal standards with regard to radiofrequency radiation. 47 C.F.R. 1.1312. Small cell facilities may provide 4G or 5G service. Verizon Wireless told staff that its initial use of small cells will be to support its 4G network and to provide additional service for its customers using 4G service, although the Agreement will apply to future small cell facilities which provide 5G service.

Congress and the FCC have placed parameters on what local governments may do to regulate wireless service, with the stated intention of promoting the expansion of broadband and/or wireless service to citizens. For example, cities must treat similar providers in similar ways, and cities must respond to small cell facility applications promptly and in a formal manner. 47 USC 332(c)(7)(B)(i) and 332(c)(7)(B)(ii) and (iii). And cities cannot regulate based on the environmental effects of radio frequency emissions – that is the FCC’s jurisdiction. Id. at 332(c)(7)(B)(iv). Additionally, in 2018 the FCC adopted Order 18-133 titled “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment.” The Order was the latest in the FCC’s efforts to streamline the rollout of infrastructure for broadband services and to ensure that state or local regulations do not interfere with this expansion. Specifically, the Order clarifies the timeframes the City must respond to applications, limits local authorities’ ability to regulate the aesthetics of small cell facilities, and restricts the fees which local authorities can charge for the facilities. The Agreement with VZ complies with these limits set by the federal government as to the authority of the City over small cell facilities.

If you have specific questions about this Agreement, or if there is any other way I may be of assistance, please give me a call at 394.4140.