



City of Broken Arrow

Request for Action

File #: 17-2284, Version: 1

**Broken Arrow City Council
Meeting of: 08-15-2017**

**To: Mayor and City Council
From: Office of the City Attorney**

Title: Consideration, discussion, and possible approval of and authorization to execute a Master Lease Agreement between New Cingular Wireless PCS, LLC d/b/a AT&T Mobility and the City of Broken Arrow, Oklahoma, regarding the placement of communication facilities on City properties and utility poles

Background:

On May 2, 2017, the City Council adopted Ordinance No. 3482 which amended the City's existing Telecommunication Tower Ordinance. Revisions to the Zoning Code, made with the assistance of outside counsel that specializes in telecommunications, modernized the provisions and categorized antennas separately from towers. Separation into different sections was recommended to alleviate any confusion regarding permitting and the approval process.

The remaining revisions related to small cell facilities. As the Council is aware, technology is advancing at a very rapid pace in the telecommunications field. The proposed revisions allowed for permitting and approval of small cell facilities within the City. They were the result of a model ordinance provided by AT&T, who approached the City regarding provision of 5G service to the citizens of Broken Arrow. Revisions were recommended by outside counsel to ensure compliance with state and federal laws and municipal best practices. Importantly, the ordinance was reviewed by Planning Staff and recommended for adoption.

The Master Lease Agreement with New Cingular Wireless ("AT&T") was the result of a joint effort between the attorneys for AT&T and the City's outside counsel to bring 5G service to the City of Broken Arrow. It allows AT&T to use City utility poles and other real property for placement of small cell facilities and related equipment. There are numerous provisions contained in the Lease which provide protection for the City of Broken Arrow. These include identification of the City's primary use, priority of City facilities, a utility plan, required provision of an engineering study, and limitations on use. All provisions of placement of small cell facilities and operation must be in accordance with FCC regulations and state and federal laws.

As the Council is aware, the City currently has several leases with AT&T for placement of antennae and other cellular equipment on city facilities. This Lease Agreement pertains solely to small cell technology and is considerably more detailed. It provides for approval of specific locations, establishes various conditions on use, installation requirements, and inspection. It also addresses damage to City facilities, modification of City facilities, and permitting. It also imposes requirements on AT&T regarding insurance, limitations on liability, indemnification, removal at the end of the term, and assignment.

The initial term of the agreement is 20 years. Each supplement, which represents placement of individual facilities at a particular location, is for a term of five years. The annual rental for each supplement is \$250.00. To protect the City's interests, there are provisions for payment of the rent, and late payments. Application fees and supplement review fees will be as set forth in the Manual of Fees.

This is an incredibly comprehensive Lease which provides maximum protections to the City, while advancing provision of cutting-edge technology to citizens of Broken Arrow. Legal Department Staff is in the process of finalizing this document. Once this is accomplished, the final version will be provided to the Council. The City Attorney would like to express her appreciation to Mike Bradley, the City's outside counsel, for his invaluable assistance in preparation and review of the ordinance and the Agreement. Staff recommends that the Council approve the Master Lease Agreement and authorize its execution.

Cost: Oversight, Approval, and Inspection Costs

Prepared By: Beth Anne Childs, City Attorney

**Reviewed By: Assistant City Manager-Operations
Development Services**

Approved By: Michael L. Spurgeon, City Manager

**Attachments: Ordinance No. 3482
Master Lease Agreement**

Recommendation:

Approve the Master Lease Agreement and Authorize its execution.