

Agenda Report

TO: CITY COUNCIL **Date:** June 1, 2009
FROM: CITY MANAGER
SUBJECT: APPROVE A LICENSE AGREEMENT BETWEEN THE CITY OF PASADENA AND OMNIPOINT COMMUNICATIONS, INC., A SUBSIDIARY OF T-MOBILE USA, INC., FOR THE INSTALLATION OF PRIVATE IMPROVEMENTS WITHIN THE PUBLIC RIGHT-OF-WAY ALONG OAK KNOLL AVENUE AT ALPINE STREET

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the activity described in the License Agreement is determined to be categorically exempt, Class 1, as approved by Minor Conditional Use Permit No. 4808, and no further environmental review is required; and
2. Authorize the City Manager to enter into a License Agreement with Omnipoint Communications, Inc., for the property located on Oak Knoll Avenue at Alpine Street, with terms and conditions as set forth in the License Agreement.

BACKGROUND:

Omnipoint Communications, Inc. (Licensee), a subsidiary of T-Mobile USA, Inc., is the owner of a wireless communications company that wishes to place a wireless facility within the public right-of-way along the east side of Oak Knoll Avenue at the intersection of Alpine Street. In October of 2006, the Licensee submitted a Minor Conditional Use Permit (MCUP) application to allow the replacement of an existing street light pole on the east side of Oak Knoll Avenue with a new street light pole of the same height and design including the addition of a wireless telecommunications antenna on top.

The original approval of MCUP No. 4808, by the Hearing Officer, was overturned by the Board of Zoning Appeals after appeals were presented. On April 30, 2007, after a public hearing, the City Council voted to uphold the decision of the Board of Zoning Appeals. On July 17, 2007, the Licensee filed a complaint with the United States District Court. After a series of negotiations, on January 31, 2008, a Stipulated Judgment was approved by U.S. District Judge Margaret A. Morrow, consistent with the terms of the settlement approved by the City Council at their September 24, 2007, meeting. The Stipulated Judgment stated that the application for MCUP No. 4808 was deemed approved with the additional condition that there shall be no electric meter pedestal for this project. The Licensee has agreed to also install drought-resistant plants in the area around the site, which presently has no vegetation, and maintain the landscaping as stated in the Stipulated Judgment.

One of the conditions of MCUP No. 4808 was to enter into a license agreement with the City for the replacement of an existing 30-foot street light with a new 30-foot street light with the addition of a 5-foot antenna on top. The License Agreement sets forth terms, conditions and assumptions of risk by the Licensee and indemnification of the City for any activity in the public right-of-way associated with the installation, maintenance and operation of the improvements. The term for the License Agreement, consistent with the model License Agreement adopted by the City Council through Ordinance No. 6731 on November 14, 1997, is five (5) years with the option to extend for additional terms of five (5) years each. The License Agreement will automatically extend for each renewal term unless the City receives written notice from the Licensee of its intention not to extend the term of the License Agreement.

The License Agreement also includes a section entitled "Removal and Restoration" that states the financial responsibility of removal of all facilities associated with the wireless facility is solely the responsibility of the Licensee. Upon issuance of a permit for the work, a bond will be submitted by the Licensee to the City to cover the costs for these removals if they abandon their facility.

To address the power supply issue and the requirement that no electric meter pedestal be installed for this project, the Licensee has entered into a flat rate agreement with the Water and Power Department.

Finally, the Licensee Agreement includes a License Fee in the amount of \$6,000 per year. This fee will be automatically increased annually on July 1, by multiplying the annual license fee for the preceding year by 3.5 percent.

A plan showing the proposed street light replacement with antenna and the proposed landscaping is attached as Exhibit A.

FISCAL IMPACT:

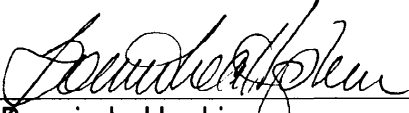
All costs for processing the License Agreement have been paid for by the Licensee.

Respectfully submitted,




MICHAEL J. BECK
City Manager

Prepared by:



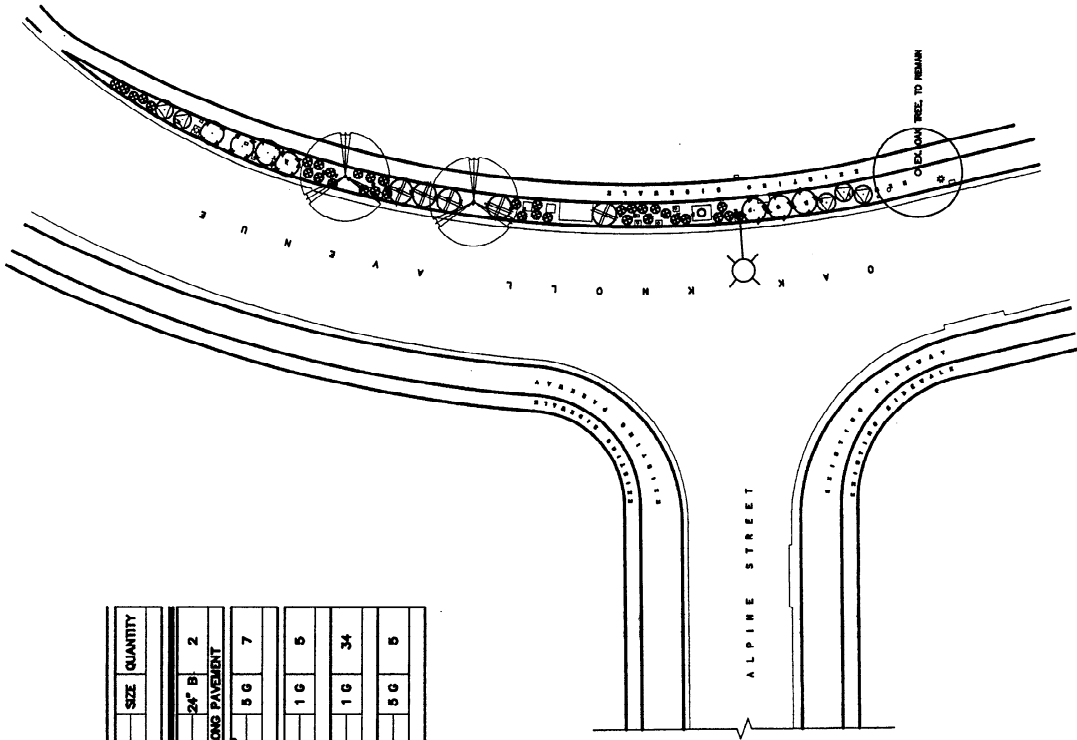
Bonnie L. Hopkins
Principal Engineer

Approved by:



Martin Pastucha, Director
Department of Public Works

BLH
Attachment



PLANT LEGEND

PLANT SYMBOL	BOTANICAL NAME COMMON NAME NOTE / DESCRIPTION	SIZE	QUANTITY
	CHRYSOMUM CAUPHORA CAUPHOR TREE NOTE: INST. LINEAR ROOT BARRIER ALONG PAVEMENT	24" B	2
	CEANOTHUS GLAUCOSUS 'ANCHOR BAY' PORT REYES CEANOTHUS NOTE:	5 G	7
	OSGUS 'SUNSET' ROCKROSE NOTE:	1 G	5
	PENSTEMON HETEROPTERILUS FOOTBALL PENSTEMON NOTE:	1 G	34
	RHAMNUS CAL. 'MOUND SAN BRANO' COFFEEBERRY NOTE:	5 G	5

