



AGENDA ITEM EXECUTIVE SUMMARY

Agenda Item number: 5.i

Title:

Recommendation to Approve Amendment to the Pole Attachment Agreement between the City of St. Charles and ComEd

Presenter:

Tom Bruhl

Meeting: Government Services Committee

Date: November 27, 2017

Proposed Cost: \$0

Budgeted Amount: \$0

Not Budgeted:

Executive Summary *(if not budgeted please explain):*

The City has an existing pole attachment agreement with ComEd for the purpose of maintaining fiber cables that extend beyond City boundaries to D303 schools. The City has a Fiber Maintenance Agreement with D303 accounting for the pole attachment costs with ComEd to be a pass through expense that D303 reimburses the City for.

In recent work on pole attachment agreements, City staff realized that the pole attachment cost terms in the ComEd agreement from 2001 were not consistent with industry norms. City staff, with the help of our ComEd Senior Account Manager Mike Staples, drafted a revised pole attachment cost structure that saves D303 approximately \$6,000 per year.

Attachments *(please list):*

* Pole Attachment Amendment

Recommendation/Suggested Action *(briefly explain):*

Recommendation to Authorize Mayor and City Clerk to Execute Pole Attachment Agreement Amendment with ComEd.

AMENDMENT TO POLE ATTACHMENT AGREEMENT

THIS AMENDMENT TO POLE ATTACHMENT AGREEMENT ("Amendment"), is made and entered into as of this ___ day of December 2017, is by and between Commonwealth Edison Company ("ComEd"), having a mailing address of 3 Lincoln Centre 4th Floor, Oakbrook Terrace, IL 60181 and the City of St. Charles, Illinois, having a mailing address of 2 E. Main Street, St. Charles, Illinois, 60174 ("Licensee").

WHEREAS, ComEd and Licensee entered into a Pole Attachment Agreement dated September 21, 2001 (the "Agreement"), whereby ComEd granted a license to Licensee to use specific poles for Licensee's Equipment in a manner more specifically set forth in the Agreement; and

WHEREAS, ComEd and Licensee desire to amend the Agreement to modify the "Compensation" section.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ComEd and Licensee agree as follows:

1. Definitions. All capitalized terms used but not defined herein shall have the same meanings as defined in the Agreement.
2. Amendment to Agreement. Section 12.1.2 Subsequent Years shall be deleted in its entirety and replaced with the following:

12.1.2 Subsequent Years. Thereafter, for so long as the Agreement is in effect, Licensee shall pay to ComEd, when billed, an annual fee for each Facility and for each Power Supply attached to a ComEd Pole calculated pursuant to the then-current regulatory formula applicable to such attachment. Should no formula exist or if no such formula applies to category of attachment, then Licensee agrees to negotiate and pay a fee for such attachments with Licensor no later than sixty (60) days' following such time when the prior formula no longer exists or becomes inapplicable to one or more types or categories of attachment.

3. Other Terms and Conditions Remain. In the event of any inconsistencies between the Agreement and this Amendment, the terms of this Amendment shall control. Except as expressly set forth in this Amendment, the Agreement and Amendment otherwise are unmodified and remain in full force and effect. Each reference in the Agreement to itself shall be deemed also to refer to this Amendment.

SIGNATURES APPEAR ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties have caused their properly authorized representatives to execute and seal this Amendment on the dates set forth below.

"COMED"

Commonwealth Edison Company,
an Illinois corporation

By: _____

Printed Name: _____

Date:

Title:

"LICENSEE"

Mayor, City of St. Charles, Illinois:

By: _____

Printed Name: _____

Date:

Title: Mayor

City Clerk, City of St. Charles, Illinois:

By: _____

Printed Name: _____

Date:

Title: City Clerk

LICENSEE ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)
COUNTY OF _____)

I CERTIFY that on _____, 2017, _____ personally came before me and acknowledged under oath that he:

- (a) is __Mayor__ for the City of St. Charles, Illinois, the Licensee named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the City of St. Charles; and
- (c) executed the instrument as the act of the City of St. Charles.

Notary Public

My Commission Expires:

LICENSEE ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)
COUNTY OF _____)

I CERTIFY that on _____, 2017, _____ personally came before me and acknowledged under oath that he:

- (a) is __City Clerk__ for the City of St. Charles, Illinois, the Licensee named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the City of St. Charles; and
- (c) executed the instrument as the act of the City of St. Charles.

Notary Public

My Commission Expires:

COMED ACKNOWLEDGEMENT

CORPORATE ACKNOWLEDGEMENT

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

I CERTIFY that on _____, 2017, _____ personally came before me and acknowledged under oath that he or she:

- (a) is the _____ of Commonwealth Edison Company, the corporation named in the attached instrument,
- (b) was authorized to execute this instrument on behalf of the corporation; and
- (c) executed the instrument as the act of the corporation.

Notary Public

My Commission Expires: