We wrote an article on this subject several years ago that talked about the basics of wireless site agreements with telecom communications providers. This article builds on the information contained in that article, and provides insight from transactions and experiences that have occurred since that article was published by the WASWD.

**Negotiations with Telecos**

Background. Most telecommunications companies (called “telecos” in this article) are very large business enterprises. They frequently use third parties – engineering firms, site managers, consultants and others who specialize in wireless sites – for procurement, management, and maintenance/repair of their onsite equipment. Typically, the consultants have no authority to bind the telecom, and if you negotiate a site agreement with them you may find that this was just the start of negotiations, that the agreement will be then be subject to review and renegotiation by a property manager, legal department or both, and that the concessions you thought you had gained in bargaining may be taken away in new rounds of negotiations.

It is thus important to try to negotiate only with a person who has authority to bind the telecom. Here are a few thoughts on how to deal with this situation.

Authority. Politely decline to bargain with a consultant or other person and request that the telecom provide a person with authority to engage in binding negotiations.

Deposit For Transaction Costs. The negotiation process described above can be long and expensive. Some site owners who charged an upfront fee to pay the transaction costs have found that the deposit was not nearly enough to cover the costs of dealing with the layers of consultants, staff and attorneys on the other side. Be prepared for this and error on the side of caution when establishing the deposit amount. Advise the telecom that paying your transactional costs will be a condition of approval of the final agreement. These steps probably won’t shorten the process, but they could give you more leverage in recovering your costs when it is time to approve the site agreement.

**Extending an Existing Site Agreement**

Negotiations with telecos frequently come at or near the time an existing site agreement is ending. This is an important opportunity to replace old site agreements made on telcom forms with new agreements which protect the site owner’s interests.
Many site agreements, even older ones, have holdover clauses which require the telecom to pay increased rent (150% of existing rent is typical) when holding over after the term of the agreement expires. When this occurs, site owners should send the telecom a notice under these clauses that the telecom is holding over, and begin charging increased rent during the holdover period. This will increase revenue under the agreement and may incentivize the telecom to enter into a new site agreement more promptly.

Insurance

Site owners should review site agreements with their insurance advisors to determine what insurance coverage and endorsements should be required under the site agreement. Site owners, their commissioners and managers should be named additional insureds on the telecom’s liability policy, which should be primary to the site owner’s insurance.

Some site owners will want certified copies of insurance policies to be able to confirm the required coverage exists. The telecom may balk at this and want to provide certificates of insurance instead. This is a question the site owner should discuss with counsel as there are various issues involved.

Self-Insurance

Some telecoms will insist on the right to “self-insure”. This is a complicated subject and may involve insurance from a “captive” insurance company owned by the telecom. It is important for the owner to scrutinize such a provision carefully and obtain legal advice. It is important to make sure self-insurance provisions contain needed protections, including an adequate net worth requirement for the self-insuring party.

Subcontractors

The subject of subcontractors – consultants, contractors, maintenance firms, etc. - is an important one because once a site agreement commences the owner will likely see a constant periodic flow of contractors performing various services for the telecom which can create headaches. The site owner should require that the telecom provide identifying information and proof each subcontractor is authorized to enter the site on the telecom’s behalf, and require a certificate of insurance from the subcontractor naming the site owner, employees, commissioners, etc. with the same coverage as required by the telecom. Some owners may want to require a release of liability or even an indemnity from the contractor depending on the circumstances.

Security issues are also important. The site owner will want to have control over the gate or entry point (no telecom locks) and have procedures for controlling and documenting who enters the site. The telecom will often want a pad for a locked equipment shed. Where there are multiple users of the site the site owner will want to have the ability to require scheduling of work. In these situations site owners will want to have the ability to keep and enforce rules to protect the facility, other users, and the owner’s operations.
Taxes

Check with your tax advisor. There are potential leasehold excise tax, B&O Tax and rent exemption issues to be aware of and deal with.

Restoration

When the site agreement ends, the telecom’s equipment must be removed and any damage to the site restored. If the telecom’s equipment is located on a building, it may be expensive to remove and dispose of antennae, cabling (including underground wiring) and related items. Damage to the building must be restored, and the owner will want to have control over the work to ensure it is done correctly and does not interfere with other uses of the property. These issues are more difficult when telecom equipment must be removed from an elevated water storage facility, or when a freestanding tower must be removed.

The site owner will want to make sure that the deposit is sufficient to do this work and includes an inflation factor taking into account the life of the site agreement, and that the site agreement provides the site owner with needed level of control over the work.

Summary

Site agreements can be lucrative sources of revenue. They can also create liabilities or produce unanticipated costs if not carefully drafted to protect the utility’s interests.