

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kip Harkness
Kim Walesh

SUBJECT: SEE BELOW

DATE: June 14, 2018

Approved

D. DSL

Date

6/14/18

SUBJECT: APPROVAL OF ACTIONS RELATED TO AMENDMENTS BY AND BETWEEN THE CITY OF SAN JOSÉ AND AT&T DBA NEW CINGULAR WIRELESS PCS, LLC, RELATED TO THE PERMITTING OF SMALL CELLS ON CITY OWNED ASSETS IN THE PUBLIC RIGHT OF WAY

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute the First amendment to the Funding and Reimbursement Agreement between the City and AT&T DBA New Cingular Wireless PCS, LLC, to cover the Permitting and Process Improvement costs related to the Permitting of Small Cells.

OUTCOME

Approval of the recommendation will:

1. **Improve voice and data coverage and quality** for residents, businesses, and guests through the deployment of AT&T small cells, fiber, and new/updated macro cells throughout the City of San José;
2. **Generate additional revenue from AT&T for the Digital Inclusion Program** from a higher quantity of small cells;
3. **Future-oriented San José infrastructure** for the Internet of Things (IoT) and next generation LTE mobile connectivity;
4. **Pilot Smart City Solutions** allowing the City to explore solutions that increase the efficiency and effectiveness of city services; and
5. **Incent private-sector investment and spurs market competition** in support of the June 2017 Broadband and Digital Inclusion Strategy.

BACKGROUND

The communications technology marketplace continues to demand more connected devices, higher data volumes, and increased speed to meet customer expectations. The private-sector is meeting these demands by investing in the deployment of small cells wireless networks on street poles, building capacity throughout the city at a reasonable cost.

The use of city-owned street light poles enables building this improved broadband infrastructure, which is critical for quality of life for San José residents, businesses, and guests; realizing San José's Smart City Vision; and maintaining the brand image of the Capital of Silicon Valley. Without engaging the private-sector to encourage broadband network investments over the last decade, the City of San José (City) ranks near the bottom quartile of peer cities for internet speeds, connection rates, and network capacity. Moreover, nearly 95,000 residents do not have home broadband internet.

On October 6, 2015, City Council (Council) approved a form Master Lease Agreement (MLA) for small cells and authorized the City Manager to execute agreements with carriers.

On September 9, 2016, the City Manager executed the MLA Agreement with AT&T DBA New Cingular Wireless PCS, LLC (AT&T) for the deployment of small cells throughout the City.

On November 13, 2017, Council approved the Digital Inclusion and Broadband Strategy and directed the City Manager to engage in value exchange agreements to accelerate broadband deployments in San Jose with the goals of economic development, digital inclusion, and support for Smart Cities and the Internet of Things.

On May 1, 2018, City Council (Council) approved amending the Master Lease Agreement with AT&T and entering into a Funding and Reimbursement Agreement (FRA) for the deployment of approximately 170 small cells throughout the City.

Digital Inclusion Program Fund

During consideration of the authorization to negotiate and execute the Funding and Reimbursement Agreement between the City and AT&T DBA New Cingular Wireless PCS, LLC on May 1, 2018, the City Council directed the City Manager to establish a "Digital Inclusion Program Fund" within the General Fund that will be used to support efforts to close the digital divide for the residents of San José, with a focus on low-income youth as well as other vulnerable populations, such as the elderly and disabled. All income received from small cell usage fee revenue is to be allocated to the Digital Inclusion Program Fund. Through May 2018, \$5,255 has been received from small cell usage fees.

In accordance with the City Council direction, the Administration will monitor permitting activity and small cell lease revenues, and will recommend budget actions to credit these proceeds to a new City-Wide appropriation for the Digital Inclusion Program in the General

Fund. Future revenue estimates will be developed based on the rate of permitting and actual receipts as this new program increases in scale.

ANALYSIS

Small Cell Usage Fee Structure for This Agreement

The City's 2015 small cell usage fee structure ranges from \$2500 to \$3500 and is not competitive or fully responsive to current market conditions, the state of wireless technology favoring small cell and limited macro cell upgrades, nor consistent with the City's Broadband and Digital Inclusion Strategy

AT&T is motivated to enter into an amendment to the FRA to take advantage of usage fee structures and other terms being negotiated between the City and other telcos on an agreement by agreement basis.

The following table (Exhibit 1) defines the small cell usage fee structure for this proposed agreement and is consistent with other proposed agreements. This rate structure incentivizes higher volume deployments (accelerated broadband) with a lower Usage Fee.

Exhibit 1 –Small Cell Usage Fee Structure

Tier	# of Small Cells	Usage Fee (per small cell site per year)
1	2,000+	\$750
2	1,500-1,999	\$850
3	1,000-1,499	\$900
4	600-999	\$1,250
5	50-599	\$1,500
6	1-49	\$2,500

In this proposed agreement, AT&T is moving from a usage fee of \$1500 for 170 small cell sites to \$750 for 2000 small cell sites.

The small cell usage fee structure proposed in this agreement will be the basis for a refresh of the City's small cell master agreement and usage fee structure to be brought forward by staff in 2018.

City of San José – AT&T Common Interest Negotiation

AT&T approached the City to build on the success of the first amendment to MLA. The first amendment to the Funding and Reimbursement Agreement is consistent in the shared interest in accelerating broadband investment in San José.

San José Interests in Accelerating Broadband include:

- **Economic development** – providing the residents, businesses, and guests of San José more choice, better quality, and lower prices through:
 - Deployment of small cells capable of delivering faster mobile data speeds; and,
 - Additional choice and lower cost through activation of a competitive landscape.
- **Citywide deployment** – scaling deployment across the city with approximately 1,830 additional small cells, totaling 2,000 small cells across the City through:
 - Incenting large-scale deployments with a competitive usage fee.
- **Equitable deployment** – providing equitable access to next generation services across all communities with goals advanced through:
 - Alignment of small cell deployment locations across the City including underserved communities.
- **Build confidence** – building confidence in our vertical infrastructure team and permit process being competitive and responsive to the marketplace through:
 - Fully staffing vertical infrastructure team;
 - Process improvements; and,
 - Maintaining weekly communication with AT&T to streamline permitting.
- **Incent competitive marketplace** – spurring market competition through:
 - Setting competitive street light usage fees; and,
 - Delivering predictable permitting process.
- **Digital inclusion** – providing affordable broadband service, devices, and digital literacy to underserved communities by securing all small cell usage fee revenue received for the Digital Inclusion Program.
- **Smart City and IoT** – orienting the city's public wireless and wireline communications infrastructure to support IoT including sensor connectivity, platforms, and applications.
- **Deployment cost reduction** – incenting infrastructure build-out by reducing the deployment costs.
- **Pilot Smart City Solutions** allowing the City to explore solutions that increase efficiency and effectiveness of city services.

AT&T Interests in Accelerating Broadband include:

- **Speed and Predictability** – timely processing of small cell and fiber permits, delivering consistent permit reviews, service level intervals, and output volumes to maximize engineering and installation efficiency.
- **Reduced network cost** goals are achieved through:
 - Reduced annual small cell usage fee; and,
 - Speed and predictability goals defined above.
- **Digital Inclusion and Smart City Partnership** – Building a partnership to explore and exploit Smart City solutions while helping close the digital divide.

Public-Private Partnership and Capital Cycles

Through this first amendment, the City and AT&T are partnering to respond to AT&T's capital investment cycle. Like the City's budget cycle, AT&T has an opportunity to secure significant capital to fund broadband expansion in a short timeframe. The partnership not only demonstrates AT&T's increased investment but also their confidence in the City partnership for citywide broadband through small cell deployment.

Agreement Specific Business Terms

- This agreement duration may be negotiated as a 10-year agreement with a 5-year option or as a 15-year agreement as preferred by AT&T.
- This agreement is for a Tier 1 deployment of approximately greater than 2000 small cells.
- AT&T will provide total compensation of small cell usage fee revenue and in-kind contributions that equal \$750 per small cell site per year assuming a Tier 1 deployment.
 - This is broken down by a \$175 attachment fee; and,
 - Additional revenue and in-kind contributions of \$575.
- This agreement provides the City approximately \$10.0 million in small cell usage fee revenue assuming a 10-year agreement and a Tier 1 deployment
- This agreement also provides the City approximately \$2.0 million of in-kind contributions including the pilot of AT&T smart city solution(s) assuming a 10-year agreement and a Tier 1 deployment.
- AT&T and the City will collaborate on the most valuable smart city solutions to deploy including but not limited to:
 - Smart lighting controllers;
 - Lighting as a connectivity platform;
 - Street light-based sensors; and
 - Community Wi-Fi.
- AT&T expects the full allocation of all small cell usage fee revenue to the Digital Inclusion Program.
- AT&T and the City agree to collaborate on an equitable build-out.
- AT&T and the City agree to collaborate on LED retrofits for an appropriate value exchange.
- The City will make a good faith effort to ramp up the permitting team and meet 35 day permitting intervals in the first quarter of 2019.

Small Cell Permitting and Staffing Requirements

The 2018-2019 Proposed Operating Budget authorizes seven positions (1.0 Principal Engineering Technician, 2.0 Engineer I/II, 1.0 Senior Engineering Technician, 1.0 Senior Construction Inspector, 1.0 Building Inspector Combination, and 1.0 Principal Engineer/Architect) to create the required vertical infrastructure team in the Public Works Department. This staffing level, including potential staffing needs in the Department of Transportation, considered the scale of small cell permitting activity anticipated at that time, as negotiations with telecommunications partners were ongoing. It was originally estimated that the vertical

infrastructure team, drawing from existing Department of Transportation resources as needed, would be able to process up to 30 total permits per week.

Although the vertical infrastructure is not yet fully staffed, work on process efficiencies is underway. These efficiencies include, but are not limited to:

- An online tool to allow vendors to research streetlights for small cell installations (complete as of June 12);
- Creating a database for vertical assets which will dramatically reduce the review time necessary for the City's electrical engineers on each permit (populating this is anticipated to cost about \$1 million per year);
- Creation of standardized design templates to provide to vendors to dramatically reduce the time needed for structural review of each permit;
- Weekly internal City team meetings and weekly meetings between city staff and vendors to ensure everyone is on the same page with expectations and problems can be solved on the spot (underway);
- Creation of design and permit process guidelines and a plan checklist for vendors (nearly complete);
- Creating and managing a more robust asset management system for street furniture and wireless attachments data.

Even with the completion of the above (and more), process improvements, it is likely that additional City staff will be needed to meet the potential demands of permit issuance and construction over the next four years, as the number of permits expected to be issued over the next four to five years has doubled from prior expectations. Since the entire team is not yet in place and the process improvements are at the early stages, it is difficult to accurately estimate the number of additional staff that may be needed at this time. At a minimum, staff estimates that an additional 8 FTEs and the availability of \$2.5 million for annual on-call and consulting services may be required to support permit approval and construction inspection depending upon the desired pace of the utility vendors. However, staff will evaluate this need and report back on the exact number of additional positions that are required during the 2017-2018 Annual Report, if not earlier.

EVALUATION AND FOLLOW-UP

The City's Broadband Manager will manage the relationship between AT&T and the City Departments, including each party's compliance with amendments and agreement. As next-generation technology evolves and deployment begins, the Broadband Manager will also engage community stakeholders when there are changes to the design of the small cell devices.

The Public Works Principal Engineer will be responsible for streamlining the permit process, particularly across structural and electrical engineering and in collaboration with the Department of Transportation for screening street light locations.

The Office of Civic Innovation and Digital Strategy will return to Smart Cites and Service Improvements Committee in 2018 with an update on these usage fees, the overall small cell policy along with an update on the progress of the organizational design and strategy for leveraging the Digital Inclusion Program Fund generated from these usage fees to address the digital divide.

PUBLIC OUTREACH

More information on the City's digital inclusion and broadband strategy as well as small cell deployments will be available on the Office of Civic Innovation and Digital Strategy web page effective Friday June 15, 2018. The URL is <http://www.sanjoseca.gov/index.aspx?nid=5188>

AT&T is required to provide public noticing of proposed small cell installations. Unresolved public noticing feedback is submitted to the Department of Public Works. The City's Broadband Manager will coordinate public feedback across City Departments, the City Council, and other external stakeholders.

The Federal Communications Commission (FCC) does not allow local authorities to deny public right-of-way small cell encroachment permits for health concerns.

The City continues to inform the public that wood utility poles belong to PG&E (or the Northern California Joint Pole Association). Since the City is not the owner, there is no City control over design, placement, or aesthetics. The City can only perform safety inspections to confirm construction code compliance and approves traffic management plans. No agreement with the City contemplates permitting small cells on wooden poles.

This memorandum will be posted on the City's website for the June 26, 2018, Council Agenda.

COORDINATION

This memo was coordinated with the City Attorney's Office, the Department of Public Works, the Department of Transportation, the Library Department, and the Office of Economic Development.

COMMISSION RECOMMENDATION/INPUT

There was no commission recommendation on this action at this time.

COST SUMMARY/IMPLICATIONS

Corresponding fee-supported staffing authorizations will be brought forward at a later date for City Council consideration, pending evaluation the revised scale of small cell deployments and the aforementioned support for permit approval and construction inspection, depending upon the desired pace of the utility vendors. This authorization to amend the current Funding and Reimbursement Agreement has no net impact on the General Fund.

CEQA

Exempt, Section 15303 New Construction or Conversion of Small Structure, File No. PP16-085.

/s/

KIP HARKNESS

Deputy City Manager

Civic Innovation & Digital Strategy

/s/

KIM WALES

Deputy City Manager

Economic Development Director

For questions please contact Dolan Beckel, Acting Director, Office of Civic Innovation and Digital Strategy, at (408) 535-8260.