

COUNCIL AGENDA: 06/26/18

FILE: 18-922

ITEM: 3.5

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kip Harkness
Kim Walesh
Margaret McCahan

SUBJECT: SEE BELOW

DATE: June 15, 2018

Approved D. D. S. L. Date 6/14/18

SUBJECT: APPROVAL OF ACTIONS RELATED TO A JOINT STRATEGIC DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSÉ AND VERIZON BUSINESS NETWORK SERVICES, INC. AND GTE MOBILNET OF CALIFORNIA LIMITED PARTNERSHIP, DBA VERIZON WIRELESS VERIZON WIRELESS PERSONAL COMMUNICATIONS, LP, RELATED TO THE LICENSING OF SMALL CELLS, WIRELINE DEPLOYMENT AND FUNDING AND REIMBURSEMENT OF PERMITTING COSTS.

RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute the following:
 - (1) A Master Agreement between the City and Cellco Partnership DBA Verizon Wireless,
 - (2) Funding and Reimbursement Agreement between the City and Verizon Business Network Services, Inc., and GTE Mobilnet of California Limited Partnership, DBA Verizon Wireless, by Cellco Partnership, its general partner, to cover the costs related to the licensing of small cells, wireline deployment and funding and reimbursement of permitting costs.
- (b) Adopt the following 2018-2019 Funding Sources Resolution and Appropriation Ordinance amendments in the General Fund:
 - (1) Increase the revenue estimate for Other Revenue by \$300,000;
 - (2) Increase the revenue estimate for Fees, Rates, and Charges by \$850,000;
 - (3) Establish a City-Wide appropriation to the City Manager's Office for the Digital Inclusion Program in the amount of \$300,000;
 - (4) Increase the appropriation to the Public Works Department for the Public Works Development Fee Program – Non-Personal/Equipment by \$90,000.
 - (5) Increase the appropriation to the Public Works Department for the Public Works Development Fee Program – Personal Services by \$760,000.
- (c) Add the following positions within the Public Works Department:
 - (1) 2.0 Associate Engineer; and,
 - (2) 1.0 Engineering Technician II.

OUTCOME

Approval of the recommendation will:

1. **Improve voice and data coverage and quality** for residents, businesses, and guests through the deployment of Verizon small cells, fiber and new/updated macro cells throughout the City of San José;
2. **Generate revenue from Verizon for Digital Inclusion Program Fund** from small cell leases;
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 for small cells and authorized the City Manager to execute agreements with carriers.

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) directed the City Manager to create the Digital Inclusion Program Fund.

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 Administration 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 a newly-established City-Wide appropriation for the Digital Inclusion Program, as recommended in this memorandum. In accordance with the City Council direction, the Administration will monitor permitting activity and small cell usage fee revenue and will recommend budget actions to credit these proceeds to the Digital Inclusion Program. 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 \$2,500 to \$3,500 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.

Verizon is motivated to enter into agreements to take advantage of usage fee structures and other terms being negotiated between the City and other telecommunications providers 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 |

Verizon has not previously entered into an agreement with the City for small cell deployments. Verizon intends to deploy between 1,500 to 2,500 small cell sites. In this proposed agreement, Verizon will pay the following usage fee per site per year:

- \$175 attachment fee; and,

- Additional revenue and in-kind contribution that aligns with the Usage Fee Rate structure shown in Exhibit 1.

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 – Verizon Common Interest Negotiation

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 1,500-2,500 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 Verizon to streamline permitting.
- **Incent competitive marketplace** – spurring market competition through:
 - Setting competitive streetlight usage fees; and,
 - Delivering predictable permitting process.
- **Digital inclusion** – providing affordable broadband service, devices, and digital literacy to underserved communities through 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.

Verizon Interests in Accelerating Broadband include:

- **Speed and Predictability** – meeting Verizon's need to secure hundreds of millions of dollars in capital investment by July 1, 2018 for their budget cycle and 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 MLA, the City and Verizon are partnering to respond to Verizon's capital investment cycle. Like the City's budget cycle, Verizon has an opportunity to secure significant capital to fund broadband expansion in a short timeframe. The partnership not only demonstrates Verizon's increased investment but also their confidence in the City partnership for citywide broadband through small cell deployment.

Proposed 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.
- The intent is to deploy between 1,500 to 2,500 small cell sites.
- Verizon will pay the following usage fee per site per year:
 - \$175 attachment fee; and,
 - Additional revenue and in-kind contribution that aligns with the Usage Fee Rate structure shown in Exhibit 1.
- This agreement provides the City approximately \$11.4 million in revenue assuming a 10-year agreement. Such revenue, will be allocated to the Digital Inclusion Program Fund.
- This agreement also provides the City approximately \$2.3 million in-kind contribution to scale Verizon Connect and pilot other Verizon smart city solutions.
- Verizon smart city solutions are:
 - Verizon Connect – this solution, already deployed by the City, provides real-time vehicle performance, location, & operation information.
 - Traffic Data Services – this solution allows the City to monitor traffic on up to 150 street miles and report near real time insights such as vehicle speed, congestion, and other traffic patterns.
 - Intersection Safety Analytics – this solution supports the city's Vision Zero program by gathering data and developing insights to reduce fatalities and traffic accidents on 5 intersections.
 - Parking Optimization – this solution gathers data on parking spaces such as occupancy, availability in real time, dwell time, average turnover rate, and number of violations in a given period. The solution helps the City decrease driving time, enforce parking rules, and improve monetization opportunities for 25 parking zones.
- Verizon and the City agree to collaborating on an equitable build-out.
- Verizon and the City agree to collaborating on LED retrofits for an appropriate value exchange.
- Verizon will make an initial \$850,000 up-front permit fee payment with an annual refresh per yearly small cell deployment joint planning.
- The City will meet or exceed a 30-day permitting service level agreement.

Small Cell Permitting and Staffing Requirements

The 2018-2019 Proposed 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.

While 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); and,
- Creating and managing a more robust asset management system for street furniture and wireless attachments data.

Subsequent staff analysis factoring for the change in program scale, per agreements with AT&T, Mobilitie, and Verizon, identified the need for six additional fee-supported permanent positions (2.0 Associate Engineer, 2.0 Engineering Tech II, 1.0 Associate Construction Inspector, and 1.0 Geographic Information Specialist) among the Public Works Department and Department of Transportation, as well as funding for consulting services for electrical review and database management. Based on this updated analysis, the vertical infrastructure team will target processing 30 permits per week.

The recommendations included in this memorandum provide for a portion of funding for the additional positions, consistent with the corresponding up-front permitting fee revenue to be recognized. The remaining position costs will be funded under a separate agreement with another telecommunications partner, subject to City Council approval of the corresponding Funding and Reimbursement Agreement and recommended budget actions. It is anticipated that additional fee-supported costs will be incurred for existing staff (2.45 FTE) which may be reassigned to support the deployment of small cells, and for additional consulting services, projected to be up to \$2.5 million at anticipated annual deployment levels of roughly 1,000 permits. The overall program cost is estimated to be up to \$6.0 million, and will be wholly fee-

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supported. Subsequent budget actions to recognize additional up-front permitting payments and additional permitting fees, as well as the corresponding expenses, will be brought forward when appropriate for City Council consideration to fully fund the program.

EVALUATION AND FOLLOW-UP

The City's Broadband Manager will manage the relationship between Verizon 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 the Smart Cities 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.

Future budget actions will also be recommended to fund additional permitting costs and to recognize and allocate fee revenue to the Digital Inclusion Program.

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>.

Verizon 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.

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COORDINATION

This memo was coordinated with the City Attorney's Office, the Public Works Department, 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

The recommendations included in this memorandum recognize \$850,000 in up-front permitting fees from Verizon Wireless, allocating these funds to support staffing and non-personal equipment costs, including the acquisition of a vehicle for field support, supplies and materials, and consulting services, to be incurred in 2018-2019 for the permitting of small cells. Recommended actions will be brought forward for City Council consideration at a later date to fund additional consulting services and staffing requirements, based on actual usage and the receipt of corresponding permitting fees.

Additionally, an initial payment of \$300,000 is recommended to be recognized and appropriated to the new City-Wide appropriation for the Digital Inclusion Program. Remaining installments of \$900,000 (for a total payment of \$1.2 million) from Verizon Wireless, and corresponding increases to the Digital Inclusion Program, will be recognized and allocated as part of the regular budget process based on the timing of payments. This amount is included in the \$11.4 million dedicated to the Digital Inclusion Program over the 10-year period.

Additional small cell lease revenue is expected as permitting activity increases and will be recognized through future budget actions based on actual activity. Lease revenue will be appropriated for digital inclusion purposes in accordance with City Council direction provided May 1, 2018 to create a "Digital Inclusion Fund" to support efforts to close the digital divide for the residents of San José.

BUDGET REFERENCE

The table below identifies the fund and budget actions recommended in this memorandum.

| Fund # | Appn # | Appn. Name | Total Appn.* | Budget Action | 2018-2019 Proposed Operating Budget Page | Last Budget Action (Date) |
|--------|--------|---|--------------|---------------|--|---------------------------|
| 001 | R130 | Other Revenue | \$13,640,839 | \$300,000 | VI-43 | 06/19/2018* |
| 001 | NEW | Digital Inclusion Program | N/A | \$300,000 | N/A | N/A |
| 001 | R120 | Fees, Rates, and Charges | \$53,860,013 | \$850,000 | VI-39 | 06/19/2018* |
| 001 | 0573 | Public Works Development Fee Program – Non-Personal/Equipment | \$387,081 | \$90,000 | VIII-300 | 06/19/2018* |
| 001 | 0574 | Public Works Development Fee Program – Personal Services | \$11,582,256 | \$760,000 | VIII-300 | 06/19/2018* |


* Appropriated amounts reflect adjustments included in Manager's Budget Addendum #29, "Recommended Adjustments to the 2018-2019 Proposed Operating and Capital Budgets," approved by the City Council on June 12, 2018. The formal adoption of the 2018-2019 Appropriation Ordinance and Funding Sources Resolution is scheduled for June 19, 2018.

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 WALESH
Deputy City Manager
Economic Development Director


MARGARET MCCAHAH
Budget Director

I hereby certify that there will available for appropriation in the General Fund in Fiscal Year 2018-2019 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$1,150,000.


MARGARET MCCAHAH
Budget Director

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