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**COUNCIL AGENDA: 06/26/18**
**FILE: 18-920**

**SUBJECT: APPROVAL OF ACTIONS RELATED TO AN AMENDMENT AND A FUNDING AND REIMBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE AND RELATED TO THE PERMITTING OF SMALL CELLS ON CITY OWNED ASSETS IN THE PUBLIC RIGHT OF WAY**

## RECOMMENDATION

(a) Adopt a resolution authorizing the City Manager to execute the following:
   (1) Amendment to the Master Non-Exclusive Installation and Property Use Agreement between the City and , to amend the terms of the Form Site License Agreement; and
   (2) Funding and Reimbursement Agreement between the City and , to cover the Permitting and Process Improvement costs related to the Permitting of Small Cells.

(b) Adopt the following 2018-2019 Funding Sources Resolution and Appropriation Ordinance to amendments within the General Fund:
   (1) Increase the revenue estimate for Other Revenue by $250,000;
   (2) Increase the revenue estimate for Fees, Rates, and Charges by $700,000;
   (3) Increase the appropriation to the City Manager's Office for Broadband and Digital Inclusion Strategy by $250,000;
   (4) Increase the appropriation to the Public Works Department for the Public Works Development Fee Program – Non-Personal/Equipment by $170,000;
   (5) Increase the appropriation to the Public Works Department for the Public Works Development Fee Program – Personal Services by $310,000; and,
   (6) Increase the appropriation to the Department of Transportation for Personal Services by $220,000.

(c) Add the following positions within the Public Works Department, effective July 1, 2018:
   (1) 1.0 Associate Construction Inspector; and,
   (2) 1.0 Engineering Technician II.

(d) Add 1.0 Geographic Information Systems Specialist to the Department of Transportation, effective July 1, 2018.

## OUTCOME

Approval of the recommendation will:

1. **Improve wireless voice and data coverage and quality** for residents, businesses, and guests through the deployment of approximately 140 small cells being deployed by in the City of San Jose;
2. **Generate revenue from Mobilitie for the Digital Inclusion Program** from small cell usage fees;
3. **Continue investment in people, process, and technology** to improve the small cell permitting process;
4. **Future-oriented San José infrastructure** for the Internet of Things (IoT) and next generation LTE mobile connectivity; and
5. **Incent private-sector investment and spur 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 light poles, building capacity throughout the city.

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 September 27, 2016, the City Manager executed the Master Lease Agreement with for the deployment of approximately 140 small cells throughout the City. However, to date, no small cells have been permitted.

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

***Digital Inclusion Program Fund***

During consideration of the authorization to negotiate and execute the Funding and Reimbursement Agreement between the City and , 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 will be allocated to a City-Wide appropriation for the Digital Inclusion Program. In accordance with the City Council direction, the Administration will monitor permitting activity and small cell usage fee revenue and will bring forward future 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.

is motivated to enter into a first amendment to the Master Lease Agreement (MLA) 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 |

In this proposed agreement, is moving from the existing 2015 small cell usage fee structure ranging from $2,500 to $3,500 per small cell site per year to $1,500 per small cell site per year.

will also enter into a Funding and Reimbursement Agreement (FRA) to streamline the City's permitting processes.

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 Jose – Common Interest Negotiation***

As directed by Council, the City proactively engaged in negotiations to build on the success of the initial Master Lease Agreement (MLA), this first amendment to the MLA 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.
- **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; and,
  - 10% of small cells locations to be mutually agreed upon.
- **Build confidence** – building confidence in our vertical infrastructure team and process being competitive and responsive to the marketplace through:
  - Fully staffing vertical infrastructure team;
  - Process improvements; and,
  - Maintaining weekly communication meetings with 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.

**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 through:
  - Single Point of Contact through the Broadband Manager;

  - $1,000,000 payment from for permit process improvements including enhanced design standards, pole remediation education and training, more efficient and effective work management approaches such as Agile, SCRUM, and Kanban, asset data and asset management tools improvement, and more.
  - Advance payment of $700,000 of permitting fees, allowing for the hiring of additional staff.
- **Building upon incremental success** – Building a trusting relationship with incremental successes through amending the MLA and entering into the FRA for deployment

***Agreement Specific Business Terms***

- This agreement duration is 15 years and may be modified as negotiated by the City manager.
- This agreement is for approximately 140 small cells on behalf of their customer,
- will pay a $1,500 usage fee per small cell site license per year for the initial five-years and an annual inflation escalator of 3.0% beginning in year six.
- expects the full allocation of all small cell usage fee revenue to the Digital Inclusion Program.
- and the City agree to collaborate on an equitable build-out.
- and the City agree to collaborate on LED retrofits for an appropriate value exchange.
- will make an $700,000 in up-front permit fee payment approximately 30 days after City Council approval and City Manager signature.
- will make a $250,000 first installment of the $1,000,000 permit process improvement payment approximately 30 days after City Council approval and City Manager signature. This will be followed by three additional $250,000 installments in the 2018-2019 fiscal year as improvements are made and small cell permits are approved.
- The City will make a good faith effort to meet or exceed a 60-day permitting service level agreement.

***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.

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 , identified the need for 5.5 additional fee-supported permanent positions (2.0 Associate Engineer, 1.5 Engineering Technician II, 1.0 Associate Construction Inspector, and 1.0 Geographic Information Specialist) among the Public Works and Transportation Departments, as well as funding for consulting services for electrical review and database management. The remaining 0.5 FTE for the Engineering Technician II position will be supported by existing capital projects. Based on this updated analysis, the vertical infrastructure team will target processing 30 permits per week.

Separate actions, coinciding with the recognition of up-front permitting fee payments from other telecommunications partners, provide funding for the above additional positions. It is also 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 in 2018-2019, and will be wholly fee-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 based on actual experience.

## EVALUATION AND FOLLOW-UP

The City's Broadband Manager will manage the relationship between 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 Cities and Service Improvements Commitee 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 Digital San José, leveraging the funds generated from small cell 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

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 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 $700,000 in up-front permitting fees from , allocating these funds to support staffing in the Public Works Department and Department of Transportation, and non-personal equipment costs for the Public Works Department, including consulting services, to be incurred in 2018-2019 for the permitting of small cells. Additionally, an initial payment of $250,000 is recommended to be recognized and appropriated to the Broadband and Digital Inclusion Strategy City-Wide appropriation for process improvements. The remaining three installments of the $1,000,000 grant from , and corresponding expenses, will be recognized and allocated as part of the regular budget process once permitting thresholds are met and payment is received. 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.

Additional small cell usage fee revenue is expected as permitting activity increases and will be recognized through future budget actions based on actual activity. Revenues 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, Ord. No.) |
|---|---|---|---|---|---|---|
| 001 | R130 | Other Revenue | $13,640,839 | $250,000 | VI-43 | 06/19/2018* |
| 001 | 202K | Broadband and Digital Inclusion Strategy* | $750,000 | $250,000 | N/A | N/A |
| 001 | R120 | Fees, Rates, and Charges | $53,860,013 | $700,000 | VI-39 | 06/19/2018* |
| 001 | 0573 | Public Works Development Fee Program – Non-Personal/Equipment | $387,081 | $170,000 | VIII-300 | 06/19/2018* |
| 001 | 0574 | Public Works Development Fee Program – Personal Services | $11,582,256 | $310,000 | VIII-300 | 06/19/2018* |
| 001 | 0511 | Personal Services | $20,143,772 | $220,000 | VIII-336 | 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. PPP16-085.

/s/
KIP HARKNESS
Deputy City Manager,
Civic Innovation & Digital Strategy

/s/
KIM WALESH
Deputy City Manager
Economic Development Director

MARGARET MCCAHAN
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 $950,000.

MARGARET MCCAHAN
Budget Director

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