



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kip Harkness  
Kim Welsh  
Margaret McCahan

**SUBJECT:** SEE BELOW

**DATE:** April 19, 2018

Approved

*D. D. SyL*

Date

*4/20/18*

**SUBJECT: APPROVAL OF ACTIONS RELATED TO AN AMENDMENT AND A FUNDING AND REIMBURSEMENT AGREEMENT BY AND BETWEEN THE CITY OF SAN JOSE 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

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute the following:
- (1) Amendment to the Master Non-Exclusive Installation and Property Use Agreement between the City and AT&T DBA New Cingular Wireless PCS, LLC, to amend the terms of the Form Site License Agreement; and
  - (2) 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.
- (b) Adopt the following 2017-2018 Funding Sources Resolution and Appropriation Ordinance amendments in the General Fund:
- (1) Decrease the revenue estimate for Other Revenue by \$750,000; and
  - (2) Decrease the appropriation to the City Manager's Office for Broadband and Digital Inclusion Strategy by \$750,000.

## **OUTCOME**

Approval of the recommendation results in:

1. **Improved wireless voice and data coverage and quality** for residents, businesses, and guests through the deployment of approximately 170 AT&T small cells throughout the City of San Jose;
2. **Future General Fund revenue stream** of approximately \$5,000,000 in total over the maximum 15-year period of the contract;
3. **Improved emergency response communications network** through better quality and coverage of the existing AT&T network over which the FirstNet emergency responder communications network will operate until new spectrum on Band 14 is available;
4. **Increased small cell permitting speed** enabled through additional Public Works staff funded by AT&T up-front permitting revenue of \$850,000 in lieu of transactional cost permitting fees;
5. **Improved permitting process reliability and speed** for any permittee through organizational, process, and technology improvements funded by a \$1,000,000 payment by AT&T; and
6. **Future Oriented San Jose infrastructure** for the Internet of Things (IoT) and next generation 5G/LTE mobile connectivity.

## **BACKGROUND**

The next wave of communications technology is driving an explosion in connected devices, data volumes, and customer expectations. This next wave of connectivity for voice and data is achieved by “densifying” the wireless network through deployment of small cells on street light poles and potentially other municipal “street furniture.” Rather than just building many additional macro cell towers, small wireless facilities are mounted on street light poles and connected to the internet through fiber optics.

This robust broadband connectivity infrastructure layer is key to quality of life for San Jose residents, businesses, and guests, realizing San Jose's Smart City Vision, and maintaining the brand image of the Capital of Silicon Valley. However, during the last decade, the City has not proactively engaged with the private sector in the build-out of the City’s broadband infrastructure. The result of this “market-led” infrastructure approach has resulted in the City ranking in the bottom quartile of peer cities for internet speeds, connection rates, and input/output data processing capacity. In addition, a deep digital divide has opened with 95,000 San Jose residents not having home broadband internet.

On November 13<sup>th</sup>, the City Council adopted a resolution authorizing the City Manager to execute the Broadband and Digital Inclusion Strategy and associated recommendations. The strategy is to shift the City’s private sector engagement model from market-led to “hybrid.” In the hybrid model the City identifies the tipping point where just enough City intervention and investment can be made so that the private sector will complete the infrastructure build out. It is

estimated that the private sector can be incented to invest up to \$2.0 billion dollars in San Jose's digital infrastructure over the next decade.

The recommendations approved by the Council include:

- Staffing consolidated broadband governance leadership in the Office of Civic Innovation across City Departments and broadband service providers; and
- Pursuit of private sector investment in broadband connectivity infrastructure and digital inclusion through value exchange agreements (negotiating lease rates and other city assets to incent private sector investment for city/community benefit).

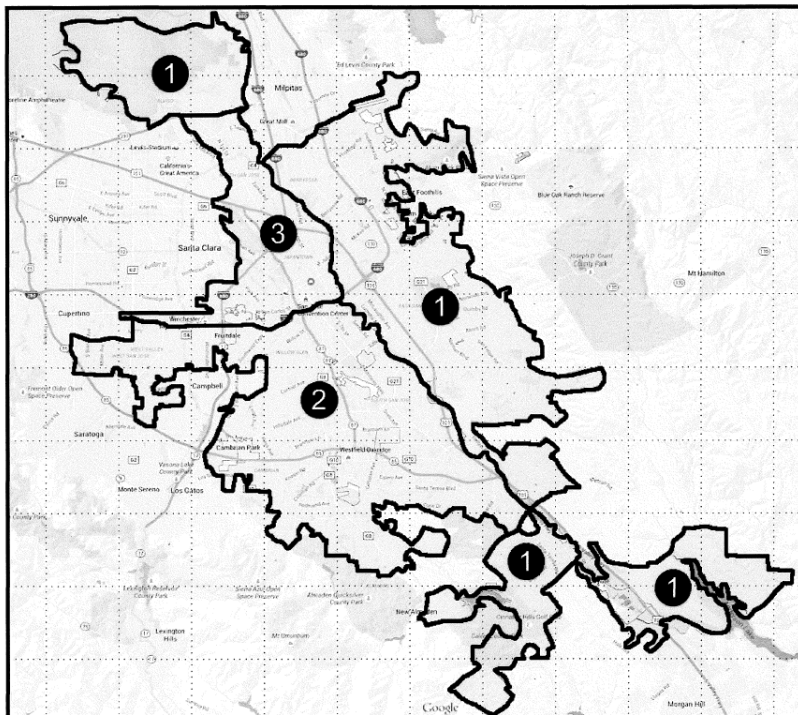
With this Council direction, the Office of Civic Innovation is currently negotiating several value exchange agreements with existing and new communications service providers. This memo describes a proposed value exchange agreement with AT&T to accelerate broadband deployment of fiber and small cells, improve the City's permitting capability, and generate General Fund lease revenue.

## ANALYSIS

### Current Small Cell Lease Rates and Implications

The City's current Master Non-Exclusive Installation and Property Use Agreement for Small Cells ("Master Agreement") was approved by Council in 2015. To incent build-out to areas with less density and/or coverage, the City was divided into three zones with Zone 1 having a 25% discount to incent build-out and Zone 2 having a 15% discount as shown in Exhibit 1.

Exhibit 1 - Zone Map



In addition to zones, the lease rate structure also included the size of the enclosure and effective radiated power output. The 2015 lease rate structure is shown in Exhibit 2. The yellow highlighted rates representing the retail annual lease rate applied for small cells.

Exhibit 2  
 2015 Lease Rates

<b>Zone 1</b>			
<i>Effective Radiated Power (ERP) Output</i>			
<i>Enclosure Size</i>	0-20 Watts	21-100 Watts	101-360 Watts
0-30 Cu. Ft.	<b>\$ 2,625</b>	\$ 5,250	\$ 10,875
31-125 Cu. Ft.	\$ 5,063	\$ 6,938	\$ 13,313

<b>Zone 2</b>			
<i>Effective Radiated Power (ERP) Output</i>			
<i>Enclosure Size</i>	0-20 Watts	21-100 Watts	101-360 Watts
0-30 Cu. Ft.	<b>\$ 2,975</b>	\$ 5,950	\$ 12,325
31-125 Cu. Ft.	\$ 5,738	\$ 7,863	\$ 15,088

<b>Zone 3</b>			
<i>Effective Radiated Power (ERP) Output</i>			
<i>Enclosure Size</i>	0-20 Watts	21-100 Watts	101-360 Watts
0-30 Cu. Ft.	<b>\$ 3,500</b>	\$ 7,000	\$ 14,500
31-125 Cu. Ft.	\$ 6,750	\$ 9,250	\$ 17,750

While this lease rate structure was appropriate for the nascent small cell market in 2015, three years later, the structure does not reflect current market conditions, the current state of wireless technology nor the City’s Broadband Strategy.

The retail lease rates shown in Exhibit 2 combined with the private sector burden of remediating the City’s poles had resulted in the City being unable to secure the necessary private sector investment in our broadband infrastructure. At the time the broadband strategy was approved on November 13, 2017 the City had not approved a single small cell permit nor collected any small cell lease revenue largely due to the existing Usage Fee Structure and a lack of centralized broadband governance.

The City's small cell leasing policy will be refreshed during the 2018-2019 fiscal year.

**City of San Jose – AT&T Common Interest Negotiation**

As directed by Council, the City proactively engaged AT&T in negotiations to define each party's interest in accelerating broadband in San Jose in order to find common interests that could be the basis of an agreement.

**San Jose Interests** in Accelerating Broadband include:

- **Economic development** – providing the residents, businesses, and guests of San Jose more choice, better quality, and lower prices;
- **Equitable deployment** – providing equitable access to next generation services across all communities;
- **Digital Inclusion** – providing affordable broadband service, devices, and digital literacy to underserved communities; and
- **Smart City and IoT** – orienting the city's digital infrastructure to support IoT including sensor connectivity, platforms, and applications; and
- **Deployment cost reduction** – incenting infrastructure build-out by reducing the deployment costs while maintaining public safety.

**AT&T Interests** in Accelerating Broadband include:

- **Speed** – processing of small cell and fiber permits within 60 days or less;
- **Predictability** – delivering consistent permit reviews, service level intervals, and output volumes to maximize engineering and installation efficiency;
- **Reduced deployment cost** – allowing more infrastructure investment within fixed capital budgets; and
- **Incremental success** – Building a trusting relationship with incremental successes.

**Common Interest Based Agreement**

Through exploration of each party's interests in accelerating broadband, the following common interests and terms were mutually agreed upon.

- Economic development goals are advanced through:
  - o Deployment of small cells capable of delivering gigabit level mobile data speeds.
  - o Additional choice and lower cost through activation of a competitive landscape.
- Equitable deployment goals are advanced through:
  - o Alignment of small cell deployment locations across the City including underserved communities.
- Digital Inclusion deployment goals are advanced through:
  - o Potential use of General Fund small cell lease revenue to support digital inclusion, broadband governance, broadband operations and other connectivity related projects.
- Smart City and IoT support goals are advanced through:

- Overall improvements in the City's LTE coverage over which 70%-80% of IoT data traffic will occur.
- Speed and predictability goals are achieved through:
  - \$1,000,000 payment from AT&T to the City for 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.
  - \$850,000 fronting of the permit fees in a draw down account (in lieu of a transactional payment of permit fees) allowing confidence to hire additional staff.
- Reduced network deployment cost goals are achieved through:
  - An approximate 50% reduction in the annual small cell lease rate.
  - Speed and predictability goals defined above.
- Structural or electrical improvements to City infrastructure:
  - AT&T's has committed to pay for such mutually agreed upon improvements if necessary to support AT&T's small cell deployment.

The City had been unable to incent private sector investment and recognize any revenue from small cell leases. Through a lease rate policy refresh and negotiated agreements such as this AT&T agreement, the City could generate, at peak, between \$3,000,000 and \$7,500,000 per year in annual small cell lease revenue.

#### **Agreement Specific Business Terms**

- AT&T will make an \$850,000 up front permit fee payment approximately 30 days after City Council approval and City Manager signature.
- AT&T will make a \$250,000 first installment of the \$1,000,000 process improvement payment approximately 30 days after City Council approval and City Manager signature. This will be followed by three additional installments in the 2018-2019 fiscal year as improvements are made and small cell permits are approved.
- AT&T will pay \$1,500 per year per small cell site license for the initial five year term of the agreement with an annual inflation escalator of 3.0% beginning in year six if the contract is extended.
- AT&T has the option to extend the five-year agreement for two additional 5-year periods at the then applicable rate.
- The City will make a good faith effort to meet or exceed a 60-day permitting service level agreement.
- This agreement, the first of many expected small cell waves, is for approximately 170 small cells.

#### **Policy Implications**

This agreement is executed through an amendment to the Master Agreement and Site License Agreement and supported by a Funding and Reimbursement Agreement. A complete refresh of the Master Agreement and Usage Fee Schedule is necessary and will be brought forward to Council.

### **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 the amendments and agreement.

The City's Broadband Policy analyst will collaborate with other City Departments and develop a proposed refresh of the Master Agreement and Usage Fee Schedule and bring back to Council for review and approval at a future session.

### **PUBLIC OUTREACH**

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

An example and photo simulations of the AT&T small cell installation is included in attachments/appendices to this memo.

The City will make a reasonable attempt to collaborate with AT&T on an alternate location for a small cell depending on the degree of public feedback and the impact to the overall coverage and quality of the network.

The City monitors research into health related implications of wireless and other communications technologies. It should be noted that the Federal Communications Commission (FCC) does not allow local authorities to deny public right-of-way small cell encroachment permits for health concerns.

This memorandum will be posted on the City's website for the May 1, 2018 Council Agenda.

### **COORDINATION**

This memo was coordinated with the City Attorney's Office, the Department of Public Works, the Police Department Bureau of Technical Services, and the Fire Department.

### **COMMISSION RECOMMENDATION/INPUT**

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

**COST SUMMARY/IMPLICATIONS**

There are no net costs to the General Fund resulting from the recommended actions. In anticipation of the execution of the Funding and Reimbursement Agreement with AT&T, the 2017-2018 Mid-Year Budget Review recognized \$850,000 in advance permit fees in the Public Works Development Fee Program, reserving \$450,000 for future staffing costs to be incurred in 2018-2019. Of the \$1,000,000 also recognized as part of the 2017-2018 Mid-Year Budget Review for the process improvement grant, a reduction of \$750,000 is now recommended to align anticipated receipts with the expected first installment of \$250,000. The remaining three installments, and corresponding expenses for the Broadband and Digital Inclusion Strategy Citywide appropriation, will be recognized and allocated in 2018-2019 as part of the regular budget process.

Additional revenue from small cell leases is anticipated as permitting activity increases and will be recognized through future budget actions based on actual activity. In accordance with the proposed terms, expected lease revenue is \$1,500 per year, per small cell site license for the first five years with no inflation escalator.

**BUDGET REFERENCE**

The table below identifies the fund and appropriations recommended as part of this memo. Actions to adjust the 2018-2019 Operating Budget will be brought forward for Council consideration as part of the regular budget process to recognize and allocate the remaining \$750,000 in process improvement grant funding for 2018-2019.

Fund #	Appn #	Appn Name	Total AppnAppn	Amt. of Increase/ (Decrease)	2017-2018 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)
001	R130	Other Revenue	\$183,958,167	(\$750,000)	p. 269	02/13/2018 78505
001	202K	Broadband and Digital Inclusion Strategy	\$1,000,000	(\$750,000)	N/A	02/13/2018 78505



**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



MARGARET MCCAHAN  
Budget Director

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

**Attachment #1 – Example Implementation**

See File: AT&T Small Cell Council Memo Attachment 1

**Attachment #2 – San Jose Proposed Implementation Photo Simulation**

See File: AT&T Small Cell Council Memo Attachment 2

**Attachment #3 – San Jose Proposed Implementation Photo Simulation**

See File: AT&T Small Cell Council Memo Attachment 3