



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Dolan Beckel  
Kim Walesh  
Rosalynn Hughey

**SUBJECT:** SEE BELOW

**DATE:** January 16, 2019

Approved

*D. DSyl*

Date

*1/18/19*

**SUBJECT: APPROVAL OF ACTIONS RELATED TO A FUNDING AND REIMBURSEMENT AGREEMENT FOR MACRO CELL SITE PERMITTING COSTS BETWEEN THE CITY AND T-MOBILE WEST, LLC.**

## RECOMMENDATION

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute a Funding and Reimbursement Agreement between the City and T-Mobile West, LLC, to cover the permitting costs and process improvements related to the licensing of macro sites.
- (b) Direct City staff to study the following:
  - (1) Identify and prioritize macro site people, process, technology, and regulation improvements to deliver better speed and predictability for macro site permitting;
  - (2) Analyze and return to City Council with recommendations for wireless facility pricing on City-owned property including small cells, macro cells, and other antenna systems for a holistic pricing policy approach to accelerate broadband deployment; and,
  - (3) Investigate Distributed Antenna System competitive access at large City facilities and report back to City Council with recommendations to ensure an accessible, non-discriminatory market place for in-building antenna systems.

## OUTCOME

Approval of the recommendation will:

1. **Improve voice and data coverage and quality** for residents, businesses, and guests through the deployment of T-Mobile new/updated macro sites throughout the City of San José;
2. **Incent private-sector investment and spurs market competition** in support of the November 13, 2017, Broadband and Digital Inclusion Strategy;

3. **Generate revenue from T-Mobile** from macro site leases located on City-owned property; and,
4. **Create speed and predictability** in macro site permitting through people, process and technology changes.

## **EXECUTIVE SUMMARY**

Following the November 13, 2017 approval of the City's Broadband and Digital Inclusion Strategy, the City of San José leads in broadband with the largest small cell deployment in the country since City Council approved three major telecommunications agreements on June 26, 2018. However, macro sites remain critical to a competitive marketplace, especially for the nation's third largest carrier, T-Mobile, where the City of San José is T-Mobile's largest network in Northern California.

To continue broadband leadership, the City of San José can mirror its permit process improvement innovation achieved with small cells and apply similar improvements to macro site permitting, largely within the Department of Planning, Building, and Code Enforcement. Such process improvements will deliver speed and predictability (mobile industry's primary concern) incentivizing T-Mobile's ongoing investments.

Moreover, T-Mobile's Metro brand provides entry-level mobile plans designed for lower income groups to enjoy the benefits of an upgraded mobile network, creating greater digital inclusion through more affordable phones and data plans and a more competitive market place. Process improvements concentrating on accelerating macro site permitting would, again, place the City of San José at the forefront of broadband innovation, meeting industry needs while advancing digital inclusion.

Executing a funding and reimbursement agreement with T-Mobile enables process improvements critical for accelerating macro site deployment, complementing small cells and next generation mobile technology, and further advancing the 2017 Broadband and Digital Inclusion Strategy. T-Mobile's network upgrades are estimated to reach over \$20 million in private-sector investment.

City Council is recommended to direct staff to:

- Negotiate and execute an agreement with T-Mobile for macro site permit process improvements including:
  - Permitting for 109 existing macro sites improvements;
  - Permitting for 36 new macro sites (a combination of rooftop and tower sites);
  - An estimated \$800,000 in permit fees, some or all of which could be pre-paid;
  - \$500,000 for process improvements;
  - Upgrades to 24 of the existing sites which are leased from the City and currently account for \$700,000 of annual General Fund revenue;
  - The City may also receive additional annual lease revenue from any of the 36 new macro sites are located on City-owned property; and,

- Airport locations will be excluded due to separate requirements and agreements.
- Identify and prioritize macro site people, process, technology, and regulation improvements, to deliver better speed and predictability for macro site permitting - current permitting time, depending on permit type, ranges from 90 days to 170 days.
- Make a good faith effort to meet or exceed 30-day permitting service level agreement for macro sites, targeting to achieve an average of 17 modification permits reviewed per 7 business days and 3 new site permits reviewed and prepared for the next Planning Commission meeting within 30 business days' time.
- Fair Access to Facilities – understand the process for telcos being able to access large City-owned facilities and identify any opportunities to ensure access is fair and non discriminatory among carriers.

## **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 mobile network infrastructure through a variety of methods. Many mobile telecommunications carriers are pursuing investing in small cells wireless networks attached to City-owned streetlight poles where the City secured the largest small cell deployment in the nation on June 26, 2018 with AT&T, Mobilitie and Verizon. However, there are various methods to create a wireless network preparing for fifth generation (5G) wireless network technology.

The City's broadband strategy prioritized small cells as the highest priority due to the immediate market demand. However, the broadband strategy longer term recommendations are holistic and technology agnostic and include, but are not limited to, updating the City's approach to macro sites to accelerate broadband. To expand network coverage and capacity over a wider geographic area, mobile carriers must also upgrade and expand macro cellular sites, most commonly mounted on building rooftops or on slimline poles near major thoroughfares. All mobile networks will use a combination of macro sites and small cells to provide better coverage, increased speed, and higher capacity to serve more customers even before 5G technology is fully implemented.

The City entered into a Multi-site Antenna Installation and Property Use Agreement with Omnipoint Communications, Inc. dba T-Mobile on September 16, 2007; October 9, 2008; and November 17, 2008. Between July 11, 2002, and October 9, 2013, the City of San José and T-Mobile executed 24 Site License Agreements for macro site lease locations. The earliest of these leases expired on July 10, 2017 and the latest lease will end on August 11, 2027.

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 José with the goals of economic development, digital inclusion, and support for Smart Cities and the Internet of Things.

This proposed agreement represents the next step to accelerate broadband by focusing on macro cell sites for T-Mobile and other carriers.

## **ANALYSIS**

### **Macro Sites Are Critical for Broadband Mobile Networks**

As a Smart City, the City of San José is a learning city, iterating to improve as we understand the latest data and adjust with the changing marketplace. Since City Council approved three major telecommunications agreements on June 26, 2018, the City needs to apply its broadband strategy holistically, including small cells, macro sites, major venue distributed antenna systems, and fiber deployment to further accelerate broadband. By pursuing macro site process improvements to increase speed and predictability, the City will gain a significant investment from the third largest mobile carrier, T-Mobile, valued at \$20 million in private investment to improve T-Mobile's network in the City.

Macro sites remain vital, especially to address coverage and capacity, by providing connectivity for larger geographic service areas. While macro sites can build capacity, they are primarily used for lower data demand. Intermixed with anticipated 5G radios to be located on buildings on private property or city-owned street lights in the public right-of-way, a robust network can meet the growing demand for higher quality of service throughout the community by maximizing the propagation strengths of macro sites in concert with more localized small cell sites for capacity and speed in dense areas. 5G radios will overlay and co-exist with existing fourth generation Long Term Evolution (4G LTE) radio equipment across macro sites and small cells.

San José is home to T-Mobile's largest Northern California network. T-Mobile aims to further invest in the rapidly changing 5G competitive marketplace by primarily investing in existing macro sites rather than pursuing a small cell-centric model for early 5G deployment. By adding additional equipment to improve coverage and capacity to approximately 109 existing sites and expanding the macro site network with an additional 36 new sites, T-Mobile will cover the majority of the City with improved coverage and capacity. The majority of new sites will be located on existing buildings or structures rather than traditional slimline monopoles.

### **City of San José – T-Mobile 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:
  - Improved macro sites deployment capable of delivering better coverage and 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 109 improved macro sites and 36 new macro sites across the City through:

- Incenting large-scale deployments with permitting process delivering speed and predictability.
- **Build confidence** – building confidence in our macro site team and permit process being competitive and responsive to the marketplace through
  - Fully staffing the Macro Site Team;
  - Process improvements; and,
  - Maintaining weekly communication with T-Mobile to streamline permitting.
- **Incent competitive marketplace** – spurring market competition by delivering fast and predictable macro site permitting process.
- **Digital inclusion** – providing affordable broadband service through market competition with a Metro brand designed for lower-income markets.

**T-Mobile's Interests** in accelerating broadband include:

- **Speed and Predictability** – meeting T-Mobile's need for consistent permit reviews, service level intervals, and output volumes to maximize engineering and installation efficiency.
- **Fair Access to Facilities** – understand the process for telcos being able to access large City-owned facilities and identify any opportunities to ensure access is fair and non-discriminatory among carriers.

**Business Terms for Funding and Reimbursement Agreement**

- This funding and reimbursement agreement for macro site process improvements is for 18 months.
- Upon execution of the agreement, T-Mobile will make a \$500,000 payment to the City. This funding will be managed by the City Manager's Office for macro site permitting process improvements and Distributed Antenna System competitive access investigations in collaboration with other City departments.
- T-Mobile commits to making an initial \$800,000 up-front permit fee payment with an annual refresh per year for macro site deployment, if deemed appropriate and administratively preferable to the City. This would apply to the 109 macro sites requiring modification or improvements and 36 new macro sites. If it is determined by the City that an upfront payment is not necessary, fees would be paid as permit applications are received. Airport locations will be excluded due to separate requirements and agreements.
- The City will make a good faith effort to meet or exceed 30-day permitting service level agreement for macro sites averaging 17 modification permits per 7 business days and 3 new site permits reviewed and prepared for the next Planning Commission meeting within 30 days.
- T-Mobile agrees to work with San José City Leadership to provide an equitable distribution of technology with a focus on making the Metro brand available to digitally underserved communities.

**Macro Site Team Governance and Staffing Requirements**

Macro sites are primarily located on private property, excluding at least 24 current T-Mobile leases on City-owned property. Permitting is conducted through the Department of Planning, Building and Code Enforcement (PBCE) for all privately owned property, while the permitting for City-owned property would be processed through the Department of Public Works. This agreement proposes to form a Macro Site Team, similar in structure to the Small Cell Team formed to deliver permitting commitments since the June 26, 2018, telecommunications agreements. T-Mobile desires the City to use an organizational model where the Macro Site Team in PBCE reports, and to a lesser extent the Departments of Public Works and Fire, through a dotted line to the City Manager's Broadband Manager responsible for the relationship, serving as the single point of contact with T-Mobile and other carriers, and providing the strategy for the process improvements and deployment to streamline macro site permits.

The approach to process improvements will assess people, process, and technology solutions for macro site permitting to provide speed and predictability for mobile carriers. These process improvements are critical for accelerating macro site deployment and further advancing the 2017 Broadband and Digital Inclusion Strategy. The City will make a good faith effort within 90-120 days to meet or exceed 30-day permitting service level agreement for macro sites averaging 17 modification permits per 7 business days and 3 new site permits reviewed and prepared for the next Planning Commission meeting within 30 days. While the results of the process improvements effort will determine the organizational structure and approach to meet these benchmarks, a preliminary assessment is for the current Principal Planner for macro sites to oversee permit reviews while utilizing a peak staffer/consultant from the City-approved list to perform plan review to support peak work demand. The Principal Planner will also play a key role in examining possible process improvements, streamlining the macro site permitting process. Other departments will also play a role in the improved permit process, including the Public Works Department, who is responsible for approving installations on City-owned infrastructure.

The City's Broadband Manager will manage the relationship between T-Mobile and the City Departments, including each party's compliance with amendments and the 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 macro sites.

**Digital Inclusion through Market Competition**

By delivering greater speed and predictability through macro site process improvements, digital inclusion can be further advanced through the increased market competition. T-Mobile's macro site upgrade is valued at over \$20 million dollars in private investment creating unique impacts. T-Mobile's Metro brand provides entry-level mobile plans designed for lower income groups to enjoy the benefits of an upgraded mobile network, creating greater digital inclusion through more affordable phones and data plans and a more competitive market place. The market-based approach of improving macro site permitting will likely create more affordable options with

better performance and pricing for a wider group of San José residents and visitors based on the Metro demographics and price point.

**Assess Holistic Pricing Across All Infrastructure**

In addition to process improvements for macro sites, the City needs to apply its broadband strategy holistically across small cells, macro sites, large City-owned facilities with distributed antenna systems, and fiber optic deployment in the public right of way to further accelerate broadband. Across these variety of infrastructure assets used for various broadband technologies, City staff will assess and recommend comprehensive pricing later this year that reflects current technology, and incents further investments consistent with the November 2017 Broadband and Digital Inclusion Strategy. Such pricing would also be considered in context of the City's fiscal situation and as part of future budget development processes.

**Assess Competitive In-Building Antenna Systems (Fair Access to Facilities)**

A holistic broadband user experience not only includes spanning macro sites and small cells for a robust network, but should also explore integrating network competition within in-building solutions. Mobile network technologies transmit well outdoors but signal strength can quickly degrade when mobile users enter buildings, especially indoor spaces with large crowds demanding high capacity such as a stadium, transit center, or convention center. Mobile carriers have requested the City to investigate the marketplace at the building-solution level to assess if there are additional opportunities to drive fair, non-discriminatory competition for prominent City-owned facilities that may have Distributed Antenna Systems. Assessment will exclude examining airport locations due to additional requirements and agreements. City staff will analyze the current market and report back to City council later this year with recommendations consistent with the November 2017 Broadband and Digital Inclusion Strategy.

**EVALUATION AND FOLLOW-UP**

Recognition of T-Mobile payments to the City and their allocation to the identified purposes will be brought forward to the City Council after the agreement's execution. Analysis of the macro site process improvements, holistic pricing, and competitive in-building antenna systems will be brought to the Smart Cities and Services Improvement Committee for further discussion in the fall of 2019.

**PUBLIC OUTREACH**

T-Mobile is required to provide the public 10 days' noticing for macro site development applications. The City's Broadband Manager will coordinate public feedback across City Departments, the City Council, and other external stakeholders.

The Federal Communications Commission does not allow local authorities to deny telecommunications permits for health concerns.

The City continues to inform the public that wood utility poles belong to Pacific Gas & Electric (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 approve traffic control 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 January 29, 2019, Council Agenda.

### **COORDINATION**

This memo was coordinated with the departments of Airport and Public Works, the City Attorney's Office, and the City Manager's Budget Office

### **COMMISSION RECOMMENDATION/INPUT**

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

### **COST SUMMARY/IMPLICATIONS**

The funding and reimbursement agreement will provide \$500,000 for process improvements for the City's good faith effort to achieve the new benchmarks and to help assess the potential Distributed Antenna System on City-owned property, and allows for an up-front payment of \$800,000 for City costs related to macro site permitting and inspection costs.

An up-front payment may be deemed administratively preferable in order to hire staff or pre-position consulting resources as recommended by the process improvement analysis. The \$800,000 would be drawn down to offset permitting and inspection activities; eventually the permit process would be on a pay-go basis similar to other development-related fee programs. Once the agreement is executed, staff will return to the City Council to recognize and allocate the payments from T-Mobile.

Though the process improvements effort will inform what additional resources may be necessary to achieve the new benchmarks, PBCE, Public Works, and Fire could see an increase in staffing and consulting resources, which would be brought forward for City Council consideration as a separate memorandum or as part of a future budget process.

Additional macro site lease revenue is expected as permitting activity increases and will be recognized through future budget actions based on actual activity.



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**Subject: T-Mobile Agreement for Macro Cell Site Permitting Costs**

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**CEQA**

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

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