

STRATEGIC JOINT DEVELOPMENT AGREEMENT

THIS STRATEGIC JOINT DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the date of the final execution below (the "Effective Date") by and between:

The City of Yuma, an Arizona municipal corporation ("Yuma" or the "City"); and anyCOMM Holdings Corporation, and its Affiliates (defined as an entity controlling, majority-owned, or controlled or under common voting control by one of the parties, or a contractual or joint venture partner, possessing, whether by contract or otherwise, rights with respect to the respective rights or obligations) (collectively, "anyCOMM"), a Delaware corporation with its principal offices at 2377 Gold Meadow Way, Suite 170, Gold River, CA 95670.

BACKGROUND

A. anyCOMM and Yuma have identified several key areas of focus for the Yuma community, and believe that through the joint development framework presented in this Agreement, their collective assets and expertise can meaningfully impact those key areas for the Yuma community.

B. Yuma desires to explore and develop opportunities to address significant municipal concerns such as: building a digitally connected community; driving economic development; improving public safety and transportation; revenue generation; providing a citywide Gigabit speed wireless mesh network "backbone" for smart cities applications and the connections for Internet of Things ("IoT"); and addressing the digital divide by providing an advanced high-speed, high-capacity network for the citizens and guests of Yuma.

C. anyCOMM is building a city-wide mesh network that can provide the framework for an Internet-of Things (IoT) platform (commonly referred to as "anyCOMM Smart City Solutions" or "Solutions"). The commitment to anyCOMM Smart City Solutions, which includes an integrated set of infrastructure improvements (such as the anyCOMM Nodes - which provide advanced lighting control, a Gb/s city-wide mesh network, capabilities for high speed Wi-Fi hot-spots city-wide, a cellular carrier offload potential, and a variety of other capabilities), coupled with additional hardware and solutions throughout Yuma better positions Yuma to achieve its economic development goals and objectives, and provide a range of public safety and other quality-of-life solutions and benefits to the citizens of Yuma.

D. anyCOMM is a leader in the design, implementation, and operation of high-speed Wi-Fi and communications technology networks, such as its city-wide mesh networks that can provide the framework for an IoT platform (commonly referred to as "anyCOMM Smart City Solutions" or "Solutions"), high speed Wi-Fi hot-spots, a cellular carrier offload potential, as well as back-end Network Operation Centers and anyCOMM Solutions software/firmware package, which feature an advanced suite of solutions, equipment, and services offered through its anyCOMM Solutions platform.

E. Yuma and anyCOMM share a mutual interest in the accelerated deployment of an enhanced high speed city-wide mesh network – including, without limitation, a Gb/s wireless city-wide intranet, high speed Wi-Fi hot-spot citywide and a cellular carrier offload capabilities – together with anyCOMM Smart City Solutions demonstrations, in order to provide the City and its residents, visitors and businesses located in Yuma with the benefits of an integrated high-speed mesh network of infrastructure, equipment and services.

F. Given their mutual interest, anyCOMM and Yuma desire to form a new, mutually beneficial strategic relationship in the form of a joint development collaboration (the "Collaboration") under the terms of this non-exclusive Agreement, to facilitate the planning, implementation, and management of the Collaboration, including the deployment of anyCOMM Nodes across the City and a high-speed citywide wireless mesh network, together with the implementation of enhanced public safety services, and the implementation of anyCOMM's Smart Solutions hardware and services in designated areas of Yuma, all as contemplated in the Specific Agreements (as defined below).

G. anyCOMM and Yuma share an interest in a Collaboration that will provide direct and substantial benefit to the parties, as well as the residents, and the community. Among other things, this Collaboration will provide state-of-the-art City management tools that will enable better public safety and quality-of-life outcomes for citizens, and will position Yuma for future technology advancements and economic development opportunities associated with IoT. The state-of-the-art networks and technology will provide Yuma with a competitive advantage in the area of economic development and allow for the implementation of neighborhood-focused innovation initiatives in the areas of arts, food, and technology. Measurable outcomes that deliver economic, social, and environmental benefit will be established to provide ongoing monitoring and evaluation to track progress, allow for exploration of new ideas, and inform the City's efforts to bring this initiative to scale.

H. Under this Agreement, the parties intend to set forth the guiding principles and otherwise set forth the terms and conditions relating to the undertaking of the activities specified in the Specific Agreements.

NOW THEREFORE, BE IT RESOLVED BY THE PARTIES THAT, to give effect to the Collaboration, anyCOMM and Yuma agree as follows:

1. RELATIONSHIP OBJECTIVES

- Primary Agreement Purpose. Through this agreement, the parties have the opportunity to realize mutually beneficial outcomes that neither party could implement independently, including but not limited to:
- The installation of anyCOMM Nodes on the photocell sockets of retrofitted LED streetlights together with the City commitment to allow access to city-

controlled fiber/conduit as required for backhaul purposes in order to create advanced lighting control capabilities, a cost-effective city-wide next-generation Gigabit speed wireless mesh network, an IoT access and a public safety platform, and enable Wi-Fi and a cellular offload capability that can support multiple Wi-Fi providers and/or carriers in Yuma;

- Demonstration, testing, implementation, and joint evaluation of new anyCOMM Smart City Solutions technologies to augment City services, including intelligent transportation systems;
- Development and Implementation in Yuma of one of four 50,000 square foot regional Network Operations Centers (“NOC”) planned by anyCOMM for the continental United States with an employee staff of 300 at full capacity and the capacity to serve 12 million Nodes and provide backup capability for any other NOC.
- Partnership and collaboration for expedited permitting and regulatory processing.

1.2 Key Areas of Focus. This Agreement creates a measurable framework of cooperation to achieve mutually beneficial goals to enhance the lives of citizens, residents, and guests in Yuma, by improving these key areas of focus as described in the Initiative(s) attached hereto:

- Bridging the digital divide
- Creating citizen engagement
- Fostering civic innovation
- Equipping local entrepreneurship
- Driving economic development
- Generating Revenue for the City
- Expanding active transportation and alternative modes of travel
- Reducing traffic accidents and fatalities
- Improving public safety
- Investing in connectivity infrastructure (fiber, city-wide Gigabit speed network)
- Environmental sustainability

1.3 Agreement Structure. This Agreement is an umbrella agreement under which the parties will undertake the activities identified in Specific Agreements as defined and identified in Section 2.3. Applicable terms of this Agreement are incorporated by reference into each Specific Agreement without the need for a recital to this effect in a Specific Agreement, provided that such incorporation is valid and in accordance with the applicable provisions of the Specific Agreement.

1.4 Non-Exclusive Arrangement. This Agreement is non-exclusive, and each party remains free, subject to the terms of this Agreement, to elect or decline to work with, or enter any agreements with, any other person.

2. SCOPE OF COLLABORATION

- 2.1 Implementation of the Collaboration. As of the Effective Date, the scope of the Collaboration includes the non-exclusive list of joint activities set forth in the attached Initiative #1.
- 2.2 Future Initiatives. The parties, either directly or through one or more Affiliates or subsidiaries, contractors, or other third parties, may engage in one or more Initiatives to accomplish the strategic objectives of the City, as may be added to this Agreement by mutual agreement of the parties. Each Initiative will include a description of the programs or projects that satisfy the strategic objectives of the Initiative. Subject to the detailed information in each Initiative, each party's commitments may depend on the milestones and timelines in the applicable Initiative, availability of resources, pricing and other concessions, internal or regulatory approvals, and negotiation and execution of Specific Agreements contained within an Initiative in accordance with the basic principles contained in this Agreement, its Initiatives, and its Exhibits. In its sole discretion, anyCOMM may fulfill its obligations under this Agreement, and receive the benefits provided by the City, in whole or in part, through various Affiliates.
- 2.3 Specific Agreements. The activities and Collaboration described above and in the Initiatives will be memorialized further in specific agreements ("Specific Agreements") attached as Specific Agreements to applicable Initiatives, according to the process set forth in Section 3 of this Agreement. The parties (whether directly or through one or more Affiliates) intend to finalize and execute the Specific Agreements relating to Initiative #1 – Specific Agreement A (Master Smart Communities Agreement), Specific Agreement B (Node Deployment), Specific Agreement C (Master Node Network Siting and License Agreement), and Specific Agreement D (Master Network Operations Center Agreement) – each of which is attached to this Agreement, on or as soon as practicable after the Effective Date of this Agreement as time is of the essence and the implementation of each Initiative is vital to the implementation of each other Initiative. The parties have the option to delay performance under, or the effectiveness of, one or all of Specific Agreements A, B, and C until such time as Specific Agreements A, B, and C are executed and delivered by both parties. Failure to execute and deliver Specific Agreements A, B, and C within ninety (90) days of the Effective Date of this Agreement shall cause this Agreement, and any Specific Agreements, to automatically terminate unless waived in writing and signed by the parties. Both parties shall endeavor to execute and deliver Specific Agreement D within one-hundred twenty (120) days of the Effective Date of this Agreement, but failure to execute and deliver Specific Agreement D within such period shall not give cause for either party to terminate this Agreement or any of the Specific Agreements.
- 2.4 anyCOMM Project Management Services. In addition to any Specific Agreements entered into in the future under this Agreement, and in order to assure Yuma that the Collaboration will generally conform to the overall framework and vision developed by anyCOMM with Yuma, anyCOMM will provide project management services to deploy the items detailed in Initiative #1.

- 2.5 Right to Independently Develop. Subject to each party's obligations of confidentiality and rights to intellectual property as described in this Agreement, in no event shall either party be precluded from developing or providing for itself, or for others, materials that are competitive with the products and services of the other party, irrespective of their similarity to any products or services offered by the other party in connection with the Collaboration. Each party shall be free to use its general knowledge, skills, and experience, and any ideas, concepts, know-how, and techniques within the scope of its business that are used or developed in the course of undertaking this Agreement by such party, and each party shall remain free to provide products and services to any client or prospective client so long as the terms of this Agreement are not violated. In addition, subject to each party's rights to intellectual property as described in this Agreement, the parties agree that as a result of exposure to Confidential Information of the disclosing party, employees of the receiving party may gain or enhance general knowledge, skills, and experience (including ideas, concepts, know-how, and techniques) related to receiving party's business ("General Knowledge"). Subject to the confidentiality obligations herein, the subsequent use by these employees of the receiving party of such General Knowledge as retained in their unaided memories, without reference to Confidential Information in written, electronic, or other fixed form, shall not constitute a breach of this Agreement. Neither party shall have any obligation to limit or restrict the assignment of persons or to pay royalties for any work resulting from the use of such General Knowledge.
- 2.6 Order of Precedence. The order of precedence between and among this Agreement, Initiatives, and Specific Agreements, with respect to the same subject matter therein, shall be as follows, but provided that the superseding term shall apply only to the conflicting terms:
- a. Specific Agreement;
 - b. Initiative or Exhibit of this Agreement; and
 - c. The general terms and conditions of this Agreement.

3. COLLABORATION GOVERNANCE

- 3.1 Initiative. The objectives, investment commitments, concessions, and other commitments, as well as the implementation time lines and associated milestones documented in each Initiative attached to this Agreement, define the activities the parties plan to undertake for implementing and managing the deliverables within an Initiative. Neither party shall have any liability under this Agreement in the event that particular goals or estimates in the Initiative are not achieved; however, failure to achieve particular goals or objectives documented in a Specific Agreement may give rise to liability under such Specific Agreement, and the foregoing clause will in no way relieve a party of liability under such Specific Agreement.
- 3.2 Executive Sponsorship. Within the earlier to occur of execution and delivery of one or more of the Specific Agreement(s) or fifteen (15) days following the

Effective Date, each party will appoint a senior member of its management as executive sponsors for the Initiative ("Executive Sponsor"). Executive Sponsors are responsible for monitoring the relationship, conducting periodic briefings for each other and their management teams, and providing a defined means of communication with other executives. Executive Sponsors are responsible for responding to breach notices and are responsible for communication during any such notice and cure period. The Executive Sponsors are identified on Exhibit A. Each party may replace its Executive Sponsor with another executive on reasonable notice to the other party.

- 3.3 Relationship Managers. Within the earlier to occur of execution and delivery of one or more of the Specific Agreement(s) or fifteen (15) days following the Effective Date, each party will appoint a person to manage the parties' relationship ("Relationship Manager"). Relationship Managers are responsible for managing day-to-day strategy, operations, execution, and the overall relationship of the parties. Relationship Managers will act as a single point of contact for the purpose of administering an Initiative. The Relationship Managers are identified on Exhibit B, and will be responsible for apprising their respective Executive Sponsors. Among their responsibilities, Relationship Managers will work together to:

- 3.3.1 Draft, revise and implement the Initiative, monitor performance against the Initiative Plan, and provide regular information and updates to interested parties and stakeholders;
- 3.3.2 Manage and monitor performance of each Initiative, and manage implementation of Specific Agreements;
- 3.3.3 Manage the allocation of any funds identified for any Initiatives (e.g. permit fees and costs of expedited review and approvals) toward costs allocated and agreed jointly by the parties for that Initiative;
- 3.3.4 Facilitate increased knowledge of each other's organization, and coordinate training activities to advance the better understanding of the opportunities and improve the effectiveness of the Initiatives;
- 3.3.5 Lead and facilitate expectation setting and conflict resolution; and
- 3.3.6 Maintain regular communication with the designated Project Coordinators/Managers of each party who are responsible for the Initiatives as described in Specific Agreements. The Project Coordinators/Managers are identified in Exhibit C.

4. NO REIMBURSEMENT OF EXPENSES

Each party will remain solely and independently responsible for its own expenses under or arising from this Agreement, subject only to the express provisions of this Agreement or any Specific Agreement.

5. CONFIDENTIALITY; PUBLIC RECORDS ACT

- 5.1 Definition of Confidential Information. The term “Confidential Information” means anyCOMM Materials, anyCOMM trade secrets, and other anyCOMM proprietary or business information provided to the City that is clearly labeled, marked or otherwise identified as “confidential” or “proprietary information,” or would otherwise normally be considered Confidential Information in the ordinary course and scope of business.
- 5.2 Exceptions. Notwithstanding the foregoing, “Confidential Information” shall exclude (and the City shall not be under any obligation to maintain in confidence) any information (or any portion thereof) disclosed to the City by anyCOMM to the extent that such information:
- 5.2.1 Is in the public domain at the time of disclosure; or
 - 5.2.2 At the time of or following disclosure, becomes generally known or available through no act or omission on the part of anyCOMM; or
 - 5.2.3 Is known, or becomes known, to the City from a source other than anyCOMM or its representatives, provided that disclosure by such source is not in breach of a confidentiality agreement with anyCOMM; or
 - 5.2.4 Is independently developed by the City without violating any of its obligations under this Agreement or any other agreement between the parties; or
 - 5.2.5 May be legally required to be disclosed under state or local law, including the Arizona Revised Statutes, Title 39 or by judicial or other governmental action; or
 - 5.2.6 Is permitted to be disclosed by a formal written agreement executed by and between the parties.
- 5.3 Duty to Keep Confidential. The City agrees to maintain as confidential, to the extent permitted or required by applicable law, including the Arizona Revised Statutes, Title 39, all Confidential Information furnished or otherwise made available to the City by anyCOMM.
- 5.4 Requests for Disclosure Pursuant to the Arizona Revised Statutes, Title 39.
- 5.4.1 anyCOMM acknowledges that the City is a public agency subject to the requirements of the Arizona Public Records Law. anyCOMM acknowledges that it may submit to or otherwise provide the City with access to materials that anyCOMM considers Confidential Information, which may or may not be exempt from public disclosure under applicable Arizona law.

- 5.4.2 Where any third party (the “Requestor”) not otherwise authorized to access Confidential Information under this Agreement makes a demand or request to the City for access to Confidential Information (the “Request”), including, without limitation, the terms and conditions being negotiated, or the production, inspection or copying of other information designated by anyCOMM as Confidential Information, City will promptly notify anyCOMM of the Request before responding to the Requestor; however, anyCOMM shall be solely responsible for taking whatever legal steps anyCOMM deems necessary to protect information determined by anyCOMM to be Confidential Information and to prevent release of information to the Requestor (including the release of such information by the City). anyCOMM is responsible for all costs associated with pursuit of such legal steps, including the pursuit of any legal remedies.
- 5.4.3 anyCOMM understands and acknowledges that the Arizona Revised Statutes, Title 39 may compel the City to respond promptly to Requests (the “City Deadline”). Where the City has met its obligation to timely notify anyCOMM as set forth in section 5.4.2 and anyCOMM fails to notify the City that it has received a protective order or other legal remedy to bar the disclosure of information anyCOMM considers Confidential Information prior to the City Deadline, the City may, without liability hereunder, disclose the Confidential Information that is necessary to be disclosed in response to the Request.
- 5.4.4 Without limiting the more general indemnity terms of this Agreement, anyCOMM will indemnify, defend, and hold harmless the City from any claim, costs, or liability arising from such Requests, including City’s refusal to disclose information anyCOMM considers to be Confidential Information in response to any anyCOMM demand that such information not be disclosed.
- 5.4.5 Execution, Return, Disposal. Upon termination or expiration of this Agreement, City shall, at anyCOMM’s direction, make reasonable efforts to either return or destroy all Confidential Information; provided, however, any Confidential Information found in electronic format as part of City’s off-site or on-site data storage/archival process system, will be held by City and kept subject to the terms of this provision or destroyed pursuant to the City’s document retention schedule. The obligations of this provision will survive termination or expiration of this Agreement.

6. TRADEMARKS

6.1 anyCOMM Trademarks.

- 6.1.1 anyCOMM grants to Yuma the right to use the anyCOMM standard character marks and any stylized marks set forth in Exhibit D (collectively “anyCOMM Marks”) for the sole purpose of announcing the existence and content of this Agreement to third parties, provided

that the conditions for such announcements, as set forth in Section 15.2 of this Agreement, have been accomplished. Yuma's use of anyCOMM Marks shall be in accordance with anyCOMM's style guide or other written policies attached hereto as Exhibit D; provided, however, that anyCOMM may update its policies from time-to-time, and Yuma shall comply with all such updated policies that are provided to the City by anyCOMM. For avoidance of doubt, the inclusion of other marks in the style guide or other written policies of anyCOMM shall not grant Yuma the right to use any such other marks apart from the specific rights granted in respect of the anyCOMM Marks as expressly set forth in this Section or in any Specific Agreement. Yuma agrees not to affix or otherwise reference any anyCOMM Marks to or with (as applicable) products and services other than anyCOMM products or services as contemplated in this Agreement and any related Specific Agreement.

6.1.2 The goodwill arising from any permitted use of the anyCOMM Marks by Yuma shall inure to the benefit of anyCOMM. Yuma shall have no claim or right in the anyCOMM Marks, including but not limited to trademarks, service marks, or trade names owned, used, or claimed now or which anyCOMM has authority to grant Yuma the right to use in the future.

6.1.3 Except as permitted in 6.1.1, prior to the use of any on-line or hard copy material containing the anyCOMM Marks, Yuma shall submit to anyCOMM a draft or prototype of such proposed material for anyCOMM's approval or disapproval. No such material shall be used by Yuma prior to anyCOMM's written approval.

6.2 Yuma Trademarks.

6.2.1 To the extent applicable, Yuma grants to anyCOMM the right to use the name, logo, trademarks, and other marks of Yuma, excepting the City's seal (collectively "Yuma Marks") for the sole purpose of announcing the existence and content of this Agreement to third parties, provided that the conditions for such announcements, as set forth in Section 15.2 of this Agreement, have been accomplished. Any other use by anyCOMM of Yuma Marks shall require previous written consent of Yuma.

6.2.2 The goodwill arising from any permitted use of the Yuma Marks by anyCOMM shall inure to the benefit of Yuma. anyCOMM shall have no claim or right in Yuma Marks, including but not limited to trademarks, service marks, or trade names owned, used or claimed now or which Yuma has authority to grant anyCOMM the right to use in the future.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Definition of Intellectual Property Rights. "Intellectual Property Rights" means any and all tangible and intangible: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms, utility models and other industrial property rights, and all improvements thereto; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- 7.2 No Conveyance of Intellectual Property Rights. Except for the limited trademark license set forth in Section 6 above, the parties *do not* intend to convey under this Agreement any Intellectual Property Rights in, or associated with, any of their respective products, services, or any work product. Except as specifically described in this Agreement, any licensing, sale, grant, or conveyance of any Intellectual Property Rights, will be described in a Specific Agreement or in a separate agreement. Furthermore, any joint development of any new intellectual property will be subject to negotiation and execution of a Specific Agreement or a separate development agreement. Accordingly, the parties agree that unless otherwise agreed in a Specific Agreement or a separate development agreement, all right, title and interest to any and all Intellectual Property Rights in anyCOMM's products and services, and any related third-party products and services, arising prior to, during or after the term of this Agreement, including any and all modifications, enhancements, improvements, and derivative works thereof, are and will be at all times the exclusive property of anyCOMM and its third-party vendors, respectively.
- 7.3 anyCOMM's Products. anyCOMM's products are proprietary and confidential trade secrets of anyCOMM, which Yuma will protect in accordance with Section 5. All aspects of anyCOMM's products and products deployed by anyCOMM in providing services under this Agreement or any Specific Agreement, including without limitation, programs, methods of processing, program design and structure, the interaction and unique programming techniques they employ and their screen formats, and will (i) remain anyCOMM's exclusive property, (ii) not be used except as permitted by this Agreement or a Specific Agreement, and (iii) not be disclosed or otherwise communicated by Yuma, directly or indirectly, to anyone except as permitted by this Agreement or a Specific Agreement. The safeguards established in this Section 7 will not be deemed to prohibit sales and marketing communications, demonstrations of anyCOMM's products, or use of the object code form of anyCOMM products in their intended operational environment, where the operation of the same may be observed by persons other than Yuma personnel.

- 7.4 License Agreements. The parties may grant to each other a non-exclusive, paid up, royalty-free license to use, copy, modify and make derivative works of certain reports, technologies and products. Unless otherwise expressly agreed in writing by the parties, all licenses granted are restricted to a party's internal use in evaluating the technologies and products, and will be subject to the terms of the license governing term and termination.

8. TERM AND TERMINATION

- 8.1 Term. The Agreement commences on the Effective Date and will continue as long as a Specific Agreement is in effect.

8.2 Termination.

8.2.1 The following are causes for the early termination of the Agreement:

- a. Mutual agreement of the parties.
- b. Failure to fulfill, or material breach of, any of its clauses after a reasonable period in which to cure such failure or breach.
- c. Violation of a party's confidentiality, trademarks, or Intellectual Property Rights.
- d. Legal impossibility to continue the scope of the Agreement.
- e. Material impossibility to continue the scope of the Agreement.

8.2.2 The parties agree to escalate any matters that may result in termination of the Agreement to the Executive Sponsors for resolution prior to exercising their termination rights above, provided that the Executive Sponsors must resolve such dispute within thirty (30) calendar days under Section 8.2.1 (b) or (e) and seven (7) calendar days after receipt of written notice of the dispute for escalations under Section 8.2.1 (c) or (d). Notice must be provided in accordance with the terms of Section 14.7 of this Agreement.

8.2.3 Notwithstanding the foregoing, each Specific Agreement is subject to its own terms governing term, wind-down, notice provisions, and termination.

9. DISPUTE RESOLUTION

- 9.1 Resolution Process. If a dispute arises between anyCOMM and Yuma pertaining to the subject matter of the Collaboration (a "Dispute"), prior to the initiation of any formal legal action, the following dispute resolution process shall apply. The parties' respective Relationship Managers will initiate and execute the entire escalation and resolution process and use discretion to resolve the Dispute through conference calls or face-to-face meetings. Except as provided in Section 9.2, the entire escalation and resolution process described below will be completed in fewer than ninety (90) calendar days after written notice of the Dispute. The parties may agree in writing to an

extension of this time period.

- 9.1.1 Any Dispute will be submitted in writing for discussion and resolution to the parties' respective Relationship Managers. Each Relationship Manager will include any other relevant senior managers from its party, such as any affected sales and business unit managers. The Relationship Managers will have sixty (60) calendar days after referral of the Dispute to resolve it to the parties' mutual satisfaction. If the Relationship Managers are unable to resolve the Dispute within the time provided, they will refer the matter to the Executive Sponsors. The Executive Sponsors will have an additional thirty (30) calendar days after referral of the Dispute to resolve it to the parties' mutual satisfaction.
 - 9.1.2 For Disputes related to performance of any terms related to permitting requirements hereunder, the Relationship Managers will have five (5) days after referral of the Dispute to resolve it to the parties' mutual satisfaction. If the Relationship Managers are unable to resolve the Dispute within the time provided, they will refer the matter to the Executive Sponsors. The Executive Sponsors will have an additional five (5) days after referral of the permitting Dispute to resolve it to the parties' mutual satisfaction
 - 9.1.3 If the parties are unable to resolve the Dispute after exhaustion of the process specified in Section 9.1.1 and 9.1.2, then the parties shall be free to pursue any remedies available to them at law or equity in accordance with Section 14.11.
- 9.2 Exception. For Disputes relating to an alleged or actual breach of the confidentiality obligations or any intellectual property ownership or licensing issues, the parties may submit the matter for discussion and resolution to the general counsel, city attorney or other head of the legal service of each party. These individuals shall use their good faith efforts to resolve the Dispute within thirty (30) days, or such longer time as the parties may agree. Notwithstanding the foregoing, each party, without waiving any remedy under this Agreement, may seek an injunction or other equitable relief in the court of its choosing, subject to the venue provisions set forth herein, to protect its Confidential Information and Intellectual Property Rights.

10. WARRANTIES

EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN ANY OF THE SPECIFIC AGREEMENTS, THE PARTIES MAKE NO WARRANTIES – EXPRESS, IMPLIED, OR STATUTORY – TO THE EXTENT PERMITTED BY LAW; AND EACH PARTY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES TO THE EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE,

ACCURACY OF INFORMATIONAL CONTENT AND IMPLIED WARRANTIES
ARISING FROM CUSTOM OR USAGE OF THE TRADE.

11. INDEMNIFICATION

11.1 Indemnification Obligation. anyCOMM and Yuma shall indemnify, defend, and hold harmless the other party, its current and former Affiliates, its and their respective current and former officers, directors, employees, principals (partners, shareholders or holders of an ownership interest, as the case may be), agents, and the successors and assigns, from and against any and all liabilities, third party claims, demands, losses, damages, and expenses (including reasonable attorney's fees and costs as incurred) associated with or incurred as a result of any claim, action, or proceeding brought by a third party arising out of or relating to (i) such party's negligence, recklessness, or willful acts, directives, errors, or omissions in performing its obligations under this Agreement that result in personal injury (including death) or damage to tangible property; and (ii) such party's infringement or misappropriation of intellectual property rights directly attributable to its activities under this Agreement.

11.2 Notice Obligations. Yuma and anyCOMM will (i) promptly notify each other of the claim and furnish it with a copy of each communication relating to the claim; (ii) give each other sole authority, at its cost and expense, to defend or settle the claim and to conduct any negotiations related to it; and (iii) give each other such assistance and information as may be reasonably necessary to defend or settle the claim. The parties may select competent counsel of its own choice to defend any claim, provided that such counsel does not have a conflict of interest (as defined by applicable court or bar association rules) that the other party does not waive.

12. CITY IMMUNITIES

In no event shall the language in this Agreement constitute or be construed as a waiver or limitation of Yuma's rights or defenses with regard to sovereign immunity, Governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

13. CONSEQUENTIAL DAMAGES WAIVER

EXCEPT FOR A BREACH OF A PARTY'S CONFIDENTIALITY, THE TERMS OF A LICENSE GRANT, OR A VIOLATION OF A PARTY'S TRADEMARK OR INTELLECTUAL PROPERTY RIGHTS, NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY HEREIN, TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECULATIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE, LOSS OF BUSINESS

OR LOSS OF PROFIT. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

14. GENERAL PROVISIONS

- 14.1 Entire Agreement and Modifications. No change, amendment to, or modification of this Agreement shall be valid unless set forth in a written instrument signed by both parties.
- 14.2 Publicity. Marketing, advertising, promotional materials (e.g., marketing collateral), press releases or other public announcements regarding this Agreement, the activities hereunder, or any Specific Agreement, shall be made only after receiving the prior written consent of the other party, except as required by law, in which case the other party shall be consulted to the extent reasonably practicable as to the content and timing of such release, announcement or statement. Notwithstanding the foregoing, each party may generally describe the collaborative nature of the relationship with the other party in presentations, and proposals.
- 14.3 Privacy and Data Rights. The parties commit to comply with all applicable privacy and data protection laws, rules and regulations relating to the personal information of employees, affiliates, and independent contractors of Yuma and anyCOMM. To the extent the parties can grant such permission, each party grants the other as well as Affiliates, subsidiaries, business partners, assignees and contractors, acting on behalf of a party, permission to store, use and process each other's business contact information and other Business Personal Data. For purposes of this Agreement, "Business Personal Data" means any information relating to an identified or identifiable individual associated or affiliated with the entities entering into this Agreement. "Process" or "Processing" means any operation or set of operations performed upon the Business Personal Data, whether or not by automatic means, including collection, recording, organization use, transfer, disclosure, storage, manipulation, combination and deletion of Personal Data.
- 14.4 Attorneys' Fees. Other than as provided in Sections 5.4.4 and 11 herein (Public Records Act Requests and Indemnification) and in the Specific Agreement A Sections 6.2 and 7.2 (Indemnification) and Specific Agreement C Sections 12 and 15 (Indemnification), in any suit or proceeding relating to this Agreement each party shall be responsible for its own costs and fees incurred in connection with the suit or proceeding.
- 14.5 Independent Contractors. Each party is an independent contractor and not a partner or agent of the other. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the parties or as imposing any partnership or agency obligations or liability upon either party. Further, neither party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation, or liability in the name of or otherwise on behalf of the other party.

- 14.6 Waiver. The failure of either party to insist upon or enforce performance by the other party of any provision of this Agreement, or to exercise any right or remedy under this Agreement or otherwise by law, will not be construed as a waiver or relinquishment of such party's right to assert or rely upon the provision, right, or remedy in that or any other instance; rather the provision, right or remedy will be and remain in full force and effect.
- 14.7 Notices. Any notice, approval, request, authorization, direction, or other communication under this Agreement shall be given in writing, directed to the addresses of the parties below, and shall be deemed to have been delivered and given for all purposes: (i) on the next business day if delivered by electronic mail, and with return receipt requested; or (ii) on the delivery date if delivered personally to the party to whom the same is directed; or (iii) one (1) business day after deposit with a commercial overnight carrier with written verification of receipt; or (iv) five (5) business days after the mailing date whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available to the contact at the address of the party to whom the same is directed. Either party may from time to time change its address for purposes of this paragraph by giving the other party notice of the change in accordance with this paragraph.

In the case of anyCOMM:

anyCOMM
2377 Gold Meadow Way, Suite 170,
Gold River, CA, 95670.
Attn: Head of Business

In the case of Yuma:

City of Yuma
One City Plaza
Yuma, AZ 85364
Attn: City Administrator

With a copy to :
City Attorney
One City Plaza
Yuma, AZ 85364

- 14.8 Force Majeure. Neither party shall be deemed in breach of this Agreement if it is prevented from performing any of the obligations under this Agreement by reason of severe weather and storms, levee breaches; earthquakes or other natural catastrophes; strikes or other labor unrest; power failures; nuclear or other civil or military emergencies; acts of terrorism; acts of legislative, judicial, executive or administrative authorities; or any other circumstances which are not within its reasonable control. A delay beyond a party's control automatically extends the time, in an amount equal to the period of the delay, for that party to perform the obligation under this Agreement. The parties shall prepare and sign an appropriate document acknowledging any extension of time under this section.
- 14.9 Compliance with Laws. Each party hereby represents and covenants that the exercise of its rights and performance of the obligations pursuant to the terms

hereof, are consistent with, and do not violate, any applicable laws, rules, or regulations to which such party is subject.

- 14.10 No Disqualification. Nothing contained herein shall preclude anyCOMM or its Affiliates from pursuing or bidding on any future City procurement opportunity or opportunities, and nothing in this Agreement is intended to limit future anyCOMM - City bids or business opportunities in any way.
- 14.11 Governing Law and Venue. This Agreement and any action related thereto shall be governed, controlled, interpreted, and defined by and under the laws of the State of Arizona and the United States, without regard to the conflicts of laws provisions thereof. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona or in the United States District Court for the District of Arizona, if, and only if, the Superior Court lacks jurisdiction over such action).
- 14.12 Remedies. In addition to any specific remedies listed in this Agreement, the parties shall have the right to bring any remedy in law or equity to enforce the provision of this Agreement.
- 14.13 Assignment. The rights and obligations assumed by each of the parties under this Agreement shall not be assigned or otherwise transferred, in whole or in part, without the written prior consent of the other party, provided however that either party may assign this Agreement: (i) to any successor by way of any merger, consolidation, or other corporate reorganization of such party or sale of all or substantially all of the assets of such party, provided that such subsidiary or parent or successor assumes or is otherwise fully bound by all of the obligations of the assigning party under this Agreement; (ii) or in whole or in part to an Affiliate. In cases where writing prior consent is not required, the assigning party shall provide the other party with notice of such assignment within thirty (30) days, such notice to contain the new entity and contact information.
- 14.14 Severability. This Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed and reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision and (b) such invalidity or unenforceability will not affect any other provision of this Agreement, which shall continue in full force and effect.
- 14.15 Survival. Sections 5 (Confidentiality), 7 (Intellectual Property Rights), 9 (Dispute Resolution), 10 (Warranties), 11 (Indemnification), 12 (City Immunities), 13 (Consequential Damages Waiver), and 14 (General Provisions) shall survive expiration or termination of this Agreement for any purpose.
- 14.16 Counterparts. The parties may sign this Agreement, and any Initiatives and

Specific Agreements, in counterparts, each of which will be considered an original, but all of which will constitute the same agreement. Facsimile and portable document format (PDF) signatures shall be binding as if original.

- 14.17 No Third-Party Beneficiaries. This Agreement and the Specific Agreements created pursuant to this Agreement are solely for the benefit of the City and anyCOMM, including anyCOMM Affiliates. They are not intended to benefit any third parties.
- 14.18 Compliance with Laws. In performance of their respective obligations under this Agreement, each party will comply with applicable law, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities having jurisdiction, including but not limited to the Americans with Disabilities Act (ADA) and shall indemnify City for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. Each party shall not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Agreement, and must comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964) and State Executive Order No. 2009-09. The parties shall not to participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Arizona state law. anyCOMM shall include similar requirements of all subcontractors in Agreements entered for performance of anyCOMM's obligations under this Agreement. anyCOMM shall keep fully informed and shall at all times during the performance of its duties under this Agreement to ensure that it and any person for whom anyCOMM is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting this Agreement and any Specific Agreements, including, but not limited to, the following: (A) existing and future City and County ordinances and regulations; (B) existing and future State and Federal laws; and (C) existing and future Occupational Safety and Health Administration standards.
- 14.19 Captions. The captions preceding the sections of this Agreement are intended only for convenience of reference and in no way define, limit, or describe the scope of this Agreement or the intent of any provision hereof.
- 14.20 Construction of Document. The parties acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said party being the drafter and that this Agreement shall not be construed as a binding offer until signed by both Parties.
- 14.21 Final Agreement. This Agreement, together with all Exhibits hereto and other terms and policies of anyCOMM referenced herein, and any Specific Agreements that have been executed and delivered by the parties, sets forth the entire agreement between the parties relating to the Collaboration, and supersedes any and all prior or contemporaneous agreements and representations written or oral, of the parties with respect to the subject matter set forth herein. Any addition,

variation or modification to this Agreement shall be void and ineffective unless made in writing and signed by the parties hereto.

- 14.22 E-verify Requirements. To the extent applicable under Arizona Revised Statutes (“A.R.S.”) § 41- 4401, anyCOMM and its subcontractors warrant compliance, and are contractually obligated to comply, with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A) (“Immigration Warranty”). anyCOMM’s or its subcontractor’s failure to comply with Immigration Warranty shall be deemed a material breach of this Agreement and may subject anyCOMM to penalties up to and including termination of this Agreement at the sole discretion of the City.

The City retains the legal right to inspect the papers of all anyCOMM personnel who provide services under this Agreement to ensure that anyCOMM or its subcontractors are complying with the Immigration Warranty. anyCOMM agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of anyCOMM and any subcontractor to ensure compliance with the Immigration Warranty. anyCOMM agrees to assist the City in regard to any random verification performed.

Neither anyCOMM nor any subcontractor will be deemed to have materially breached anyCOMM Immigration Warranty if Contractor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).

- 14.23 Boycott of Israel. Pursuant to A.R.S. § 35-393.01, AnyCOMM certifies that AnyCOMM is not engaged in a boycott of Israel as of the effective date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.
- 14.24 Conflict of Interest. This Agreement shall be subject to the Conflict of Interest provisions of A.R.S. § 38-511, as amended.
- 14.25 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.
- 14.26 Signatory Authority. Each person signing this Agreement represents that such person has the requisite authority to execute this Agreement on behalf of the entity the person represents and that all necessary formalities have been met.

14.27 Exhibit and Attachments. Each exhibit and attachment referenced in this Agreement is incorporated herein by reference.

14.28 Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided, any consent to delay in anyCOMM's performance of its obligation is applicable only to the particular transaction to which it relates, and is not applicable to any other obligation or transaction.

15. CONDITION PRECEDENT

The effectiveness of this Agreement, and all Specific Agreements, is contingent upon the parties' execution of the Node Deployment Agreement identified in Specific Agreement B. If the Node Deployment Agreement is not executed within five (5) days of the Effective Date, unless otherwise extended in writing and signed by both parties, this Agreement, and each Specific Agreement hereunder, may be terminated by either party and be of no effect. The right to terminate under this section expires if the parties enter into the Node Deployment Agreement.

[Signature Page(s) Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CITY OF YUMA

anyCOMM Holdings Corporation

By _____
Gregory K. Wilkinson, City Administrator

By _____

Print Name _____

Date

Title _____

ATTEST:

Date

Lynda L. Bushong, City Clerk

APPROVED AS TO FORM:

Richard W. Files, City Attorney

DRAFT

EXHIBIT A: EXECUTIVE SPONSORS

For anyCOMM:

Business Management:

Head of Business Management –

Legal Management:

Legal

For Yuma:

Business Management:

City Administrator

Legal Management:

City Attorney

EXHIBIT B: RELATIONSHIP MANAGER

For AnyCOMM:

Director of Business Management - Yuma

For Yuma:

Business Management:

Deputy City Administrator

Legal Management:

City Attorney

EXHIBIT C: PROJECT MANAGER(S)/COORDINATOR(S)

For AnyCOMM:

Project Manager - Yuma

For Yuma:

Business Management:

Assistant ITS Director, Infrastructure

DRAFT

The anyCOMM Logo: Usage Guidelines

The anyCOMM logo is a trademark of anyCOMM Holdings Corporation. In order to protect and grow the anyCOMM brand, we have a distinguishable logo. There are guidelines for the logo's appearance and usage, outlined here.

Logo Usage

The Standard Logo

DRAFT

anyCOMM



PANTONE 201C



PANTONE Cool Gray 10C

Greyscale Logo

In greyscale reproduction, use the black and white version on the logo:



For Use on Light Backgrounds

The normal greyscale reproduction is suitable for use on light backgrounds without modification.

For Use on Dark Backgrounds

For dark backgrounds in a greyscale printing situation, please contact anyCOMM marketing for guidance.

Some examples follow:

Trademark Symbol

The 'TM' or ® trademark symbol as used by anyCOMM must always be visible and readable for both the anyCOMM Logo in the placements shown in these guidelines. You may not remove or obfuscate either of the TM or ® symbols in the anyCOMM Logo.

Clear Space

There should be enough clear space around the logo.

Never Stray from the Color Palette

Improper Design Usage

Never Switch the Colors

Use a choice from the palette provided.

Never Use the Design on Similarly-Colored Backgrounds

Never use the design on similarly-colored backgrounds. Use a choice from the palette that is appropriate for the background.

Never Rearrange Elements of the Design

Do not change spacing, alignment, or relative locations of the design elements.

Never Stretch or Distort the Logo

Do not change the proportions of any of the design elements or the design itself. You may resize as needed but must retain all proportions.

INITIATIVE #1

As of _____, 2017, (the “Effective Date”) the City and anyCOMM agree to the terms and conditions contained in this Initiative #1, as part of the Strategic Joint Development Agreement entered into on _____, 2017.

1. Initiative.

The areas addressed through Initiative #1 are:

- Bridging the digital divide
- Driving economic development
- Creating citizen engagement
- Generating revenue and cost savings
- Reducing traffic accidents and fatalities and improving traffic flow
- Improving public safety
- Investing in connectivity infrastructure (Nodes and fiber)

1.1 Bridging the digital divide. anyCOMM and Yuma will collaborate to create solutions and business models to address the issue that many citizens do not have access to affordable broadband and thus are disadvantaged compared to those who do. anyCOMM will create capabilities for a municipal Wi-Fi service in targeted areas of the City through a city-wide Node deployment. anyCOMM will also provide the City with dedicated VLAN networks that the City can use to further streamline city functions, services, and economic development programs.

1.2 Creating citizen engagement. To promote more connected, better-informed, and safer communities, anyCOMM will create City-wide high-speed wireless mesh network that encourages people to interact with their community and each other; that enables the City to connect with its constituents; and that helps neighborhood businesses and economies thrive by fostering local innovation and opportunity.

1.3 Driving economic development and innovation. anyCOMM plans to establish one of four regional Network Operation Centers in Yuma, creating up to 300 new jobs. anyCOMM’s significant investment in connectivity infrastructure will allow enterprise and small and medium businesses (“SMB”) in Yuma to have increased efficiencies and access to services previously difficult to obtain. anyCOMM will be providing a developer platform to the City, and will be working together with the City to engage with key partners such as local universities, the SMB community, and high-tech entrepreneur groups on strategic community development opportunities and IoT ventures.

1.4 Reducing traffic accidents and fatalities and improve traffic flow. Yuma, as with all cities, has challenges with traffic congestion and accidents. anyCOMM will help the City create solutions to assist with traffic flow that will provide predictive analytics in intersections with a high number of accidents and help the City with proactive solutions.

15 Improving public safety and security. Improving public safety and security is a key area of focus for the City of Yuma. anyCOMM will enhance the City's public safety systems with City controlled audio and video on streetlights in the City.

16 Revenue generation and cost savings. Generating revenue from City assets and driving costs savings from existing infrastructure are key areas of focus for the City of Yuma. anyCOMM will share twenty percent (20%) of the net profit generated in Yuma with the City, after capital equipment return on investment, as set forth in the Master Smart Communities Agreement.

17 Investing in connectivity infrastructure. anyCOMM will deploy in the City state-of-the art a high-speed mesh network citywide that will enhance the City's attractiveness to existing and new businesses, drive economic development, and spur innovation.

2. Specific Agreements. Specific Agreements are:

2.1 Master Smart Communities Agreement: Specific Agreement A;

2.2 Node Deployment: Specific Agreement B; and

2.3 Master Node Network Siting and License Agreement: Specific Agreement C.

2.4 Master Network Operations Center Agreement: Specific Agreement D.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CITY OF YUMA

anyCOMM Holdings Corporation

By _____
Gregory K. Wilkinson, City Administrator

By _____

Print Name _____

ATTEST:

Title _____

Lynda L. Bushong, City Clerk

APPROVED AS TO FORM:

Richard W. Files, City Attorney

DRAFT