REQUEST FOR CITY COUNCIL ACTION

MEETING DATE:	August 16, 2017
DEPARTMENT:	City Administration
DIVISION:	Administration

☒ Motion
☐ Resolution
☐ Ordinance - Introduction
☐ Ordinance - Adoption
☐ Public Hearing

TITLE:
Agreement: anyCOMM Holdings Corporation

SUMMARY RECOMMENDATION:
Authorize the City Administrator to negotiate and execute: (1) a Strategic Joint Development Agreement, (2) a Master Smart Communities Agreement, (3) a Node Deployment Agreement, and (4) a Master Node Network Siting and License Agreement with anyCOMM Holdings Corporation (anyCOMM) for approximately 10,000 devices (Nodes).

REPORT:
The use of smart cities technologies, fiber optics, wireless infrastructure, data, and communication is growing rapidly in all segments of society. The demand and need for high-speed data connectivity from residents, businesses, and visitors is accelerating with limitless possibilities. The City and anyCOMM desire to build a long-term strategic collaboration for the deployment of high speed high capacity networks and smart city technology throughout the City. Implementing the nodes will improve quality of life for residents, reduce costs to the City, and deliver services to the community in smart and effective ways.

Under the agreements, anyCOMM will provide advanced street lighting control; create a City-wide high-speed wireless mesh network sufficient to support smart city applications and connections for the Internet of Things (IoT); and improve public safety and security in exchange for use of the photocell sockets on the streetlights and other City-owned assets. The four agreements are summarized below:

Strategic Joint Development Agreement:
The Strategic Joint Development Agreement (SJDA) sets forth the objectives and general conditions of the collaboration, including the desire to drive economic development, generate revenue for the City, and improve public safety. The SJDA also explains that the implementation and use of the Nodes will be addressed through a Master Smart Communities Agreement, Node Deployment Agreement, and Master Node Network Siting and License Agreement. The term of the SJDA runs until the latest expiration date of the Master Smart Communities Agreement, Node Deployment Agreement, Master Node Network Siting and License Agreement, and the Network Operations Center Agreement (collectively the "Specific Agreements"), except that if the Master Smart Communities Agreement, Node Deployment Agreement, or Master Node Network Siting and License Agreement are not executed within 90 days of the execution of the SJDA, either party may terminate the SJDA and the Specific

Agreements.

Master Smart Communities Agreement:
The Master Smart Communities Agreement has a 25-year term and sets forth the conditions regarding (i) the current Node capabilities available for City use; (ii) the storage and use of any data collected by the Nodes; (iii) the deployment of a citywide high-speed wireless network; and (iv) the distribution of a portion of anyCOMM's net profits to the City.

Under the Master Smart Communities Agreement, anyCOMM will own the Nodes, but the City, at no cost, may (i) use the Nodes' advanced streetlight control feature, which include the functionality of a photocell and ability to dim and change the color of the streetlights, and meter the light's energy usage; and (ii) access the Nodes' video and audio sensor data – which detect gunshots, car accidents, and graffiti – for public safety purposes. anyCOMM has the option to charge the City if the City uses anyCOMM to process or package the data obtained by the sensors. The Nodes have a lifetime warranty and anyCOMM is responsible for all maintenance and repairs.

The agreement further requires anyCOMM to provide the City with (i) a high-speed mesh network within six months of the completion of the initial Node deployment, and (ii) a high-speed Wi-Fi network throughout the City within one-year of the completion of the initial Node deployment and the receipt of any required permits.

In addition to the use of certain Node capabilities, anyCOMM must pay the City twenty percent (20%) of anyCOMM's net profits attributable to Yuma. anyCOMM, however, is not required to make any such payments until after it recoups its capital investments made in Yuma, except for expenses arising from the network operations center. The agreement requires anyCOMM to provide quarterly financial reports to the City regarding the status of its capital investments and provides the City with the ability to audit anyCOMM's financial records up to once a year.

Finally, the agreement prohibits anyCOMM from either (1) using any data collected by the Nodes to identify, market to, or otherwise contact an individual without such individual's consent; (2) combining any data with any other information that relates to an identified individual to identify, market to, or otherwise contact such individual or individual device, without such individual's consent; or (3) attempting to re-identify any personally identifiable data to the extent that such data has been anonymized or otherwise de-identified, without such individual's consent.

If any of this agreement or Master Node Network Siting and License Agreement is terminated anyCOMM shall, at its sole cost, remove and replace the nodes with a standard photocell.

Node Deployment Agreement:
The Node Deployment Agreement sets forth the terms for the deployment of Nodes. Under the Node Deployment Agreement, anyCOMM will install approximately 10,000 nodes, at no cost to the City, on City streetlights and other assets, such as traffic boxes, in the rights-of-way. anyCOMM plans to use Siemens Industry, Inc. to install the Nodes on the streetlights in conjunction with the LED installations that Siemens is doing for the City. The agreement further requires anyCOMM to receive an encroachment permit prior to performing any maintenance, repair, replacement, or testing activities on the Nodes. The agreement has a 25-year term.

Master Node Network Siting and License Agreement:
The Master Node Network Siting and License Agreement gives anyCOMM a license to attach the Nodes to the City's streetlights and other assets in the rights-of-way and provide telecommunications services. The agreement also permits anyCOMM to license space on the Nodes to third-parties with the City's consent, and so long as any third-parties providing telecommunications services receive a license pursuant to the Yuma City Code. The License Agreement to anyCOMM is valid for a five (5) year term, and will automatically renew for up to four additional five-year terms unless anyCOMM

defaults on the terms of the agreement. The City assets used by anyCOMM will be listed in site supplement agreements which are a part of the Master Node Network Siting and License Agreement.

Network Operations Center Agreement:
The SJDA requires the Network Operations Center Agreement (NOC Agreement) within one-hundred twenty (120) days of the SJDA effective date, but failure to execute the NOC Agreement does not terminate the SJDA and other agreements approved by this motion. The NOC Agreement will set forth the terms and conditions for anyCOMM to construct a network operations center in Yuma that is projected to create up to 300 jobs at full capacity.   The NOC Agreement will be presented to City Council for approval prior to execution.

By approving this motion, the City Council authorizes and directs the City Administrator to negotiate and execute the attached SJDA, Master Smart Communities Agreement, Node Deployment Agreement, and Master Node Network Siting and License Agreement with anyCOMM, and negotiate a Network Operations Center Agreement to be presented for City Council approval at a future date.

FISCAL REQUIREMENTS	CITY FUNDS:	$0.00	BUDGETED:	$0.00
	STATE FUNDS:	$0.00	AVAILABLE TO TRANSFER:	$0.00
	FEDERAL FUNDS:	$0.00	IN CONTINGENCY:	$0.00
	OTHER SOURCES:	$0.00 $0.00 $0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	$0.00		
	FISCAL IMPACT STATEMENT:			

ADDITIONAL INFORMATION

SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:

1.
2.
3.
4.
5.

IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?

- ○ Department
- ◉ City Clerk's Office
- ☐ Document to be recorded

SIGNATURES	CITY ADMINISTRATOR: Gregory K. Wilkinson	DATE: 8/8/2017
	REVIEWED BY CITY ATTORNEY: Richard W. Files	DATE: 8/7/2017
	RECOMMENDED BY (DEPT/DIV HEAD):	DATE:
	WRITTEN/SUBMITTED BY:	DATE: