

SMART CITIES PILOT PROGRAM AGREEMENT

This Pilot Agreement (the "Pilot Agreement") is entered into as of the date of the last signature below (the "Effective Date") by and between AT&T Mobility, LLC, on behalf of itself and its affiliates ("AT&T"), and the City of Farmers Branch, Texas (the "City") (at times, AT&T and the City are referred to individually as a "Party" and together as the "Parties"). AT&T and the City will be deemed to include their respective parents, subsidiaries, and affiliates, and the directors, officers, employees, agents, representatives, and subcontractors of all of them.

1. RECITALS.

1.1 The City is interested in testing demonstrations of certain products and services to improve the City's technical or financial efficiencies and/or otherwise improve the quality of life of Farmers Branch residents and visitors.

1.2 AT&T is similarly interested in working with government entities such as the City to provide product demonstrations to create what is referred to as "Smart Cities."

1.3 The City and AT&T have created and agreed upon one or more statements of work (each a "SOW") that among other things, identifies the various technologies, equipment, solutions, software, and/or systems to be provided to the City in a pilot scenario (collectively, the "Services"), and sets forth the various operational responsibilities and obligations associated with a corresponding pilot of such Services (the "Pilot"). A copy of each SOW is or will be attached hereto in Exhibit A.

1.4 Certain third parties (each an "Alliance Member") have entered into agreements with AT&T that, among other things, allow AT&T to provide certain of the Services.

1.5 The Parties intend to implement the Pilot in accordance with the terms and conditions of this Pilot Agreement including, without limitation, the SOW(s).

2. AGREEMENT. In consideration of the recitals set forth in §1 above, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, AT&T and the City hereby agree to the terms and conditions of this Pilot Agreement.

3. PILOT.

3.1 General. Under the Pilot, AT&T, through itself and the Alliance Members, will provide a pilot of certain Services, as set forth in the SOW(s). The Parties will cooperate in good faith to implement the Pilot in accordance with this Pilot Agreement and the SOW(s). Additional SOWs may be added to the Pilot Agreement provided each is signed by an authorized representative of the City and AT&T. SOWs may include additional terms and conditions including, but not limited to license terms. Each SOW will have its own term and may include corresponding termination rights.

3.2 Pilot Period. Under the Pilot Agreement, and subject to any termination rights set forth herein, the term "Pilot Period" means the time period from the Effective Date of each Pilot through the expiration of the last remaining SOW hereunder.

3.3 Termination. Either Party may terminate the entire Pilot Agreement for convenience upon thirty (30) days' advance written notice. A termination of the entire Pilot Agreement under this §3.3 terminates each and every SOW. Termination of an individual SOW will not operate to terminate any other SOW or the Pilot Agreement.

3.4 Costs and Fees. Each SOW will set forth the corresponding, mutually agreed-upon costs and fees for the Services to be provided in connection with such SOW.

3.4.1 Additional Charges and Taxes. Prices set forth in a SOW are exclusive of and the City will pay all taxes (excluding those on AT&T's net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from the City's failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Services, except to the extent the City provides a valid exemption certificate prior to the delivery of Services. To the extent required by law, the City may withhold or deduct any applicable taxes from payments due to AT&T, provided that the City will use reasonable commercial efforts to minimize any such taxes to the extent allowed by law or treaty and will furnish AT&T with such evidence as may be required by relevant taxing authorities to establish that such tax has been paid so that AT&T may claim any applicable credit.

3.4.2 Payments. Payment is due within thirty (30) days after the date of the invoice (unless another date is specified in a SOW) and must refer to the invoice number. Charges must be paid in the currency specified in the invoice. Restrictive endorsements or other statements on checks are void. The City will reimburse AT&T for all costs associated with collecting delinquent or dishonored payments, including reasonable attorneys' fees. AT&T may charge late payment fees at the lowest of (a) 1.5% per month (18% per annum), (b) for Services contained in a Tariff or Guidebook (as applicable) at the rate specified therein, or (c) the maximum rate allowed by law for overdue payments.

3.4.3 Delayed Billing; Disputed Charges. The City will not be required to pay charges for Services initially invoiced more than 6 months after close of the billing period in which the charges were incurred, except for calls assisted by an automated or live operator. If the City disputes a charge, the City will provide notice to AT&T specifically identifying the charge and the reason it is disputed within 6 months after the date of the invoice in which the disputed charge initially appears, or the City waives the right to dispute the charge. The portion of charges in dispute may be withheld and will not be considered overdue until AT&T completes its investigation of the dispute, but the City may incur late payment fees in accordance with the above section. Following AT&T's notice of the results of its investigation to the City, payment of all properly due charges and properly accrued late payment fees must be made within ten (10) business days. AT&T will reverse any late payment fees that were invoiced in error.

3.4.4 Certain Definitions. For purposes of this Pilot Agreement, the following terms are ascribed their corresponding definitions:

- "Tariff" means documents containing the descriptions, pricing and other terms and conditions for a service that AT&T or its Affiliates file with regulatory authorities
- "Guidebooks" mean documents (designated as Guidebooks or Price Lists) containing the descriptions, pricing and other terms and conditions for a service that were but no longer are filed with regulatory authorities.

3.5 Ownership. AT&T and/or the respective Alliance Members own all the raw, original data generated with respect to the Services in connection with the Pilot. AT&T will provide the City access to certain cumulative data and reports generated with respect to the Services in connection with the Pilot, and the City may retain such cumulative data following the conclusion of the Pilot. Any and all data referred to in this §3.5 is confidential Information subject to §4.5 of this Pilot Agreement.

3.6 Pilot Conclusion. Upon expiration or termination of each SOW, the corresponding Services will no longer be operational or otherwise available to the City. The handling and disposition of certain physical equipment and/or other tangible property is addressed in each SOW.

4. TERMS AND CONDITIONS.

4.1 Limitation of Liability. Neither Party will be liable to the other Party for any indirect, incidental, consequential, punitive, reliance or special damages, including without limitation damages for lost profits, advantage, savings or revenues or for increased cost of operations arising in connection with this Pilot Agreement in any way. This §4.1 will apply (i) regardless of the form of action, whether in contract, warranty, strict liability, tort (including, without limitation, negligence of any kind, whether active or passive) or otherwise, and (ii) whether or not damages were foreseeable. With respect to proven, direct damages, AT&T's liability under this Pilot Agreement will not exceed FIFTY THOUSAND DOLLARS (\$50,000.00) on a per claim or aggregate basis.

4.2 Indemnification. AT&T will indemnify, defend and hold harmless the City against any claims, loss or damages arising out of third party claims resulting from bodily injury to or death of any person (including injury to or death of their respective subcontractors or employees) or loss of or damage to tangible real or tangible personal property and from violation of intellectual property rights, other than as described below to the extent that such liability, loss, damage or expense was proximately caused by the negligent act or omission or the willful or intentional misconduct of AT&T, its agents, employees, subcontractors, or Alliance Members in connection with the provision or use of the Services or performance of this Agreement or any SOW. AT&T's obligations to the City under this §4.2 are limited pursuant to §4.1 herein. The City agrees to give AT&T prompt written notice of any written threat, warning, or notice of any such claim, suit, or action, and to provide AT&T copies of applicable papers served upon or received by the City. To the extent permitted by law, AT&T will have the sole right to conduct the defense of any such claim, suit or action and all negotiations for its settlement, judgment or compromise. INDEMNIFIED ITEMS WILL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO THE AT&T'S LIABILITY.

4.3 Intellectual Property. Any inventions, improvements, developments or innovations resulting or derived from the Pilot that are made, conceived or devised by AT&T and/or any Alliance Member prior to, in the course of, and/or after the Pilot, including all rights to patents, copyrights, trademarks and trade secrets related thereto, are and will be the sole and exclusive property of AT&T or the corresponding Alliance Member (as applicable), including but not limited to any and all inventions, ideas, and know-how. Neither ownership of, nor title to, nor license under any invention, improvement, development or innovation (including all rights to patents, copyrights, trademarks and trade secrets related thereto) provided or made available to the City by AT&T or an Alliance Member in the course of the Pilot will pass to Port.

4.4 Warranty Exclusions.

4.4.1 THE CITY UNDERSTANDS THAT THE PILOT INVOLVES EXPERIMENTAL SERVICES AND IS OFFERED ON AN "AS IS" BASIS. AT&T AND ALLIANCE MEMBERS MAKE NO WARRANTY, GUARANTEE, OR REPRESENTATION, EXPRESS OR IMPLIED, RELATING TO THE RELIABILITY, EFFECTIVENESS, ACCURACY, COMPLETENESS, PERFORMANCE, OR OPERATION OF THE PILOT, THE SERVICE, OR OF THE EQUIPMENT AND SERVICES FURNISHED TO THE CITY FOR PURPOSES OF THE SERVICE OR THE PILOT, AND SPECIFICALLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.4.2 The City understands and agrees that AT&T does not guarantee that the Pilot will not cause interruptions in or interference with the City's telecommunications services. Credits for any service outages to AT&T's tariffed services during the Pilot Period will be determined solely in accordance with the terms of the applicable tariff or agreement.

4.5 Confidentiality. The Parties agree to the confidentiality provisions set forth in this §4.5; provided, however, that AT&T may discuss the concepts and substance of this Pilot Agreement, the SOW, and related matters with any Alliance Members that are contractually bound to confidentiality obligations with respect to such information similar to those set forth in this §4.5.

4.5.1 Agreement to Keep Information Confidential. The Parties, for their mutual benefit, desire to disclose or have disclosed to the other, certain specifications, designs, plans, drawings, software, data prototypes, or other business and/or technical information (hereinafter collectively referred to as "Information") which is proprietary to the disclosing Party or its affiliated companies and which comprise trade secrets. The receiving Party will hold such Information in confidence, will reproduce or copy such Information only to the extent necessary for its authorized use, will restrict disclosure of such Information to its employees (and, in the case of AT&T, to Alliance Members) who have a need to know, will advise such employees of the obligations assumed under this section, and will not disclose such Information to any third party without the prior written approval of the other Party.

4.5.2 Exceptions. These restrictions on the use or disclosure of Information will not apply to any Information: (a) that is independently developed by the receiving Party or its affiliated companies or lawfully received free of restriction from another source having the right so to furnish such Information; or (b) that is or becomes publicly available by means other than unauthorized disclosure; or (c) that, at the time of disclosure to the receiving Party, was known to such Party or its affiliated companies free of restriction as evidenced by documentation in such Party's possession; (d) that the disclosing Party agrees in writing is free of restrictions stated in this Pilot Agreement; or (e) that is required to be disclosed by City pursuant to the Texas Public Information Act, or other applicable law.

4.5.3 Information Subject to Confidentiality Obligations. Information will be subject to these confidentiality restrictions if it is in writing or other tangible form, only if clearly marked as proprietary when disclosed to the receiving Party or, if not in tangible form, only if summarized in a writing so marked and delivered to the receiving Party within thirty (30) days of such disclosure, in which case the Information contained in such summary will be subject to the restrictions herein. Notwithstanding the foregoing, the inadvertent failure to mark or designate Information as confidential and proprietary will not serve to waive the confidentiality thereof where it is reasonably obvious, under the circumstances surrounding disclosure, that the Information is confidential or proprietary; any such Information so disclosed or obtained will automatically be deemed to be confidential and proprietary. In addition, the following will be considered to be AT&T proprietary Information that is subject to the confidentiality obligations set forth herein, regardless of any marking by AT&T: any Services descriptions, technical data and specifications, network and Service design information, and similar data relating to the Services.

4.5.4 Intellectual Property Issues Related to Information. By conveying Information to a Party hereunder, no license nor any other intellectual property right whatsoever is granted or implied to a Party. None of the Information which may be disclosed or exchanged by the Parties will constitute any representation, warranty, assurance, guarantee or inducement by either Party to the other of any kind, and, in particular, with respect to the non-infringement of trademarks, patents, copyrights, mask protection rights or any other intellectual property rights, or other rights of third persons or of either Party.

4.5.5 Ownership of Information. All Information will remain the property of the transmitting Party and will be returned upon written request or upon the receiving Party's determination that it no longer has a need for such Information, except for cumulative data provided to the City under § 3.5 of this Pilot Agreement. Upon expiration or termination of this Pilot Agreement, each Party will return to the transmitting Party, or, if agreed to by the transmitting Party, destroy, all Information supplied by the transmitting Party, and all copies of Information. For the avoidance of doubt and without limitation, the Parties consider the following to be Information subject to the confidentiality obligations of this Pilot Agreement, and to be owned by AT&T: the information on the usage of Services by the City and other original data generated with respect to the Services that is collected by or in the possession of AT&T or the Alliance Members. Notwithstanding anything herein to the contrary, each Party may retain a copy of the Pilot Agreement following its expiration or termination. The obligations of the City under this Section 4.5.5 to return or destroy information provided is subject to the Texas Public Information Act.

4.5.6 Confidentiality Timeframes. Each Party agrees that all of its obligations undertaken in this §4.5 as a receiving Party of Information will survive and continue for three (3) years after any termination of this

Pilot Agreement. Notwithstanding the foregoing sentence, the Parties' obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law for three (3) years after termination or the period specified by applicable law, whichever is longer.

5. MISCELLANEOUS.

5.1 Publicity. The Parties will cooperate in good faith with respect to (a) any joint press releases; (b) marketing; (c) case studies; and/or (d) other publicity related to this Pilot Agreement (collectively, the "Publicity"). Neither Party will use the name or logo of the other Party in any Publicity without the express written consent of the other Party.

5.2 Application of Existing Contracts. Notwithstanding anything to the contrary in this Pilot Agreement, the Parties acknowledge and agree that the Pilot Agreement does not modify or otherwise affect any existing contract between AT&T, the City, and/or an Alliance Member, each and all of which remain in full force and effect.

5.3 Procurement Rules. The City represents, acknowledges and agrees that: (a) the City's participation in the Pilot does not violate any applicable procurement rules in effect as of the Effective Date; (b) physical equipment or other tangible personal property being left with the City at the conclusion of the Pilot (see §3.6 herein and applicable SOWs) does not violate any applicable procurement rules in effect as of the Effective Date; and/or (c) AT&T's provision of the Pilot will not disqualify AT&T from any future procurements with the City.

5.4 Access Right. The City will furnish AT&T and Alliance Members with timely access to any conduit holes, wireways, wiring, plans, equipment, space, power/utilities, and other property as AT&T and the Alliance Members reasonably require for the Services. To effectuate such access, the City will timely obtain or provide, at no cost, any necessary licenses, permits and consents (including easements and rights-of-way) necessary for the Pilot, including licenses, permits and consents for property controlled by third parties such as any of the City's landlord(s).

5.5 Safe Working Environment. The City will ensure that the location at which AT&T and/or the Alliance Members installs, maintains or provides Services is a safe working environment, free of Hazardous Materials and reasonably suitable for the Services. "Hazardous Materials" mean any substance or material capable of posing an unreasonable risk to health, safety or property or whose use, transport, storage, handling, disposal or release is regulated by any law related to pollution, to protection of air, water or soil or to health and safety. AT&T and the Alliance Members will have no obligation to perform work at a location that is not a suitable and safe working environment or to handle, remove or dispose of Hazardous Materials.

5.6 No Agency or Joint Venture. This Pilot Agreement will not be construed as creating a partnership, joint venture, employment or agency relationship or as granting a franchise. Alliance Members are not parties to this Pilot Agreement and there are no legal obligations between the City and Alliance Members associated with this Pilot Agreement, except as expressly set forth in a SOW or contained in a separate agreement between the City and an Alliance Member (e.g., end user license agreement, terms of service, etc.). It is understood and agreed by and between the Parties that AT&T, in satisfying the conditions of this Agreement, is acting independently, and that City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by AT&T pursuant to this Agreement will be in the capacity of an independent contractor, and not as an agent or employee of City. Professional will supervise the performance of its services and will be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

5.7 Costs. Except as otherwise provided, each Party will bear its own costs and expenses with respect to participating in the Pilot.

5.8 Choice of Law. The construction, interpretation and performance of this Pilot Agreement will be governed by the laws of the State of Texas without giving effect to its choice of law rules. Exclusive venue for any

action will be in the state or federal districts courts situated in Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said courts.

5.9 Assignment. Neither Party may assign or transfer or attempt to assign or transfer any part or all of this Pilot Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other Party, except that AT&T may assign this Pilot Agreement to its parent, any subsidiary, or any affiliate.

5.10 Survival. Section 4 of the Pilot Agreement will survive any expiration or termination of this Pilot Agreement.

5.11 Commitments. The City acknowledges that, except as set forth herein, nothing in this Pilot Agreement will be construed as a commitment by AT&T or Alliance Members to provide the Services to the City or any other party at the conclusion of a SOW and/or the Pilot Agreement.

5.12 Notice; Point of Contact. Any required notices under this Pilot Agreement will be in writing and will be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by electronic mail (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice will be sent to the respective Party's primary point of contact set forth below.

The City's Primary Point of Contact:

Charles Cox, City Manager
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234
972-919-2515
charles.cox@farmersbranchtx.gov

AT&T's Primary Point of Contact:

Eric Green
Senior Project Program Manager
2180 Lake Blvd NE
Atlanta, GA 30319
404-345-3517
eg5512@att.com

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, LLP
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

5.13 Force Majeure. Neither Party nor its affiliates, subsidiaries, subcontractors, parent corporation or any of its parent's affiliates or subsidiaries will be liable in any way for delay, failure in performance, loss or damage due to any of the following force majeure conditions: fire, strike, embargo, explosion, power blackout, earthquake, flood, war, labor disputes, civil or military authority, acts of God or the public enemy, inability to secure raw materials, acts or omissions of other carriers or suppliers, or other causes beyond its reasonable control, whether or not similar to the foregoing.

5.14 Vandalism. In the event that any of the Services are damaged during the Pilot due to vandalism or similar actions by third-parties, neither AT&T nor any Alliance Member will be obligated to replace or repair such Services as part of the Pilot.

5.15 No Interference. Neither the City nor any of its Users may install any amplifier, enhancer, repeater or other device or system on AT&T's network or spectrum without AT&T's prior written approval.

5.16 Priority of Documents; Conflicts. The order of priority of the documents that form this Pilot Agreement is the applicable Statement of Work and the Pilot Agreement. In the event of any conflicts between the Pilot Agreement and the applicable SOW, the SOW will control, but only with respect to its subject-matter.

5.17 Authority. By signing below, the corresponding Party's representative represents that he or she is duly authorized by AT&T or the City, as applicable, to execute the Pilot Agreement on behalf of the respective Party, and that AT&T and the City agree to be bound by the provisions hereof.

5.18 Entire Agreement. The terms and conditions of this Pilot Agreement will constitute the entire agreement and understanding of the Parties with respect to the subject matter hereof and will supersede all prior, written or oral agreements, proposals or understandings. This Pilot Agreement will not be modified, altered, changed or amended in any respect, except by a writing signed by an authorized representative of each Party.

5.19 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Pilot Agreement will survive termination.

5.20 Prohibition of Boycott Israel. AT&T verifies that it does not Boycott Israel, and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

AT&T MOBILITY, LLC

FARMERS BRANCH, TEXAS

BY: Michael J. Zeto III

BY: _____

NAME: Michael J. Zeto III

NAME: Charles Cox

TITLE: Vice President

TITLE: City Manager

DATE: 4/4/18

DATE: _____

EXHIBIT A

STATEMENT(S) OF WORK

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