

**FIRST AMENDMENT TO
FUNDING AGREEMENT BETWEEN THE CITY OF SAN JOSE AND EAST SIDE
UNION HIGH SCHOOL DISTRICT RELATING TO INSTALLATION OF A
COMMUNITY WIRELESS NETWORK IN THE DISTRICT**

This FIRST AMENDMENT TO AGREEMENT is entered this ____ day of March, 2018, by the CITY OF SAN JOSE (“CITY”), a municipal corporation of the State of California, and, the EAST SIDE UNION HIGH SCHOOL DISTRICT (“DISTRICT”), a political subdivision of the State of California. DISTRICT and CITY are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, on October 5, 2016, CITY and DISTRICT entered into an agreement entitled “Funding Agreement Between the City of San Jose and East Side Union High School District Relating to Installation of a Community Wireless Network in the District (“FUNDING AGREEMENT”); and

WHEREAS, on October 28, 2016, CITY and DISTRICT entered an agreement entitled “Agreement for East Side Union High School District Community Wi-Fi Deployment Between the City of San Jose and SmartWave Technologies LLC” (“SMARTWAVE AGREEMENT”); and

WHEREAS, CITY and DISTRICT desire to amend the FUNDING AGREEMENT to increase funding by \$2,000,000 for a total funding of \$4,700,000, to expand the Community Wireless Network to add the William C. Overfelt High School Attendance Area, and to provide ongoing maintenance and support for the James Lick and William C. Overfelt High School attendance areas;

NOW, THEREFORE, the parties agree to amend the AGREEMENT as follows:

SECTION 1. SECTION 5, “Funding” is amended and restated to read as follows:

5. Funding

- A. The District agrees to remit to the City, within thirty (30) days after this First Amendment is fully executed, an amount not to exceed Four Million, Seven Hundred Thousand Dollars (\$4,700,000) for the work and services to be provided hereunder.
- B. The District funds will be used by City to pay for equipment and contractor services and to pay for City staff cost to provide technical assistance, project management, procurement assistance, and contract management in connection with the performance of the work. The schedule of payment for City staff cost shall be in accordance with **Revised Exhibit B** entitled “City Estimated Cost.”

- C. The project buildout cost for each attendance area is estimated to be as set forth in **Revised Exhibit C** entitled “Estimated Project Cost” details how the current funding \$4,700,000 dollars from the District will be allocated, and sets forth the estimated project funding gap.
- D. The City and District are both subject to laws and policies which limit their ability to incur debt in future years. Nothing in this Agreement shall constitute an obligation of future legislative bodies of the City or District to appropriate funds for the purposes of this Agreement.
- E. The Parties agree that the Funding described in Section 5 will not serve as precedent for any future commitment by either Party related to the development of other City or District projects.
- F. City shall comply with all public and procurement bidding laws in connection with the contracting and performance of the work hereunder.

SECTION 2. EXHIBIT A, “Scope of Work and Services” is amended to read as shown in REVISED EXHIBIT A, attached and incorporated into this First Amendment.

SECTION 3. EXHIBIT B, “ESUHSD Community Wi-Fi City’s Resources Estimate May 2, 2016” is amended to read as shown in REVISED EXHIBIT B, attached and incorporated into this First Amendment.

SECTION 4. EXHIBIT C, “Estimated Project Cost” is amended to read as shown in REVISED EXHIBIT C, attached and incorporated into this First Amendment.

SECTION 5. EXHIBIT D, “Agreement for East Side Union High School District Community Wi-Fi Deployment Between the City of San Jose and SmartWave Technologies LLC” is amended to read as shown in REVISED EXHIBIT D, attached and incorporated into this First Amendment.

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SECTION 6. All the terms and conditions of the original AGREEMENT not modified by this First Amendment shall remain in full force and effect.

IN WITNESS, WHEREOF, DISTRICT and CITY have executed this First Amendment as of the date and year first above written.

CITY OF SAN JOSE, a municipal
corporation of the State of California

EAST SIDE UNION HIGH SCHOOL
DISTRICT,
a political subdivision of the State of California

LELAND WILCOX
Chief of Staff

CHRIS D. FUNK
Superintendent

APPROVED AS TO FORM:

APPROVED AS TO FORM:

ROSA TSONGTAATARII
Senior Deputy City Attorney

ROGELIO RUIZ
Rehon & Roberts, APC
Attorneys for the East Side Union High School
District

REVISED EXHIBIT A

Scope of Work and Services

In consideration of funding from East Side Union High School District (“ESUHSD”), City of San José (hereinafter “City”) shall implement the Community Wi-Fi Deployments (the “Project”) in one of the three following attendance areas of ESUHSD: James Lick High School, William C. Overfelt High School and Yerba Buena High School upon the terms specified in the agreement between the City and the City contractor, SmartWave or similarly qualified contractor, substantially in the form of agreement attached hereto as **Revised Exhibit D**.

After the first high school attendance area has been deployed, the City and District agree to evaluate the effectiveness of the network’s reliability and connectivity. This review shall also include exploring deployment options, cost models and alignment with digital inclusion goals. The review shall inform the City and District as to improvements and/or alternatives before confirming City Council direction to proceed with the two remaining attendance areas. Installation and network maintenance for the full five-year term in all three attendance areas is contingent on the availability of funds.

City shall be responsible for the following:

- a. Project Management such as, but not limited to overseeing the work of the City contractor.
- b. Project feasibility such as reviewing the scope, scheduling, project development, environmental review, permits and fees.
- c. Planning and design such as engineering support services and field investigation.
- d. Project installation such as construction management and inspection.
- e. Notify District of any material changes in the installation or design.

The Parties acknowledge that City is only providing connectivity to the Project through City contractor, and City and City’s contractors and subcontractors will not host, process, download, store, monitor or access data received by District users. The City is informed that District will encrypt their student user access and authorization process to protect the identity of the students. The City agrees not to gather, download, store, access or monitor, or allow any third party to download, store, access, gather or monitor, any information of District users for the purposes of engaging in targeted advertising or for any other purpose.

District shall be responsible for the following:

- a. Providing the City with Four Million, Seven-Hundred-Thousand dollars (\$4,700,000) to support Project cost within 30 days of the execution of this Agreement.
- b. Promptly arrange access to District facilities to support project goals such as installation and maintenance.
- c. Participate in partnership building with the City to help contain network cost and facilitate deployment.

REVISED EXHIBIT B

ESUHSD Community Wi-Fi City's Resources Estimate

ESUHSD Community Wifi Deployment - Estimated City's Support Cost - Program Level Estimate (+/- 35%)	Resources	Current FY			James Lick FY16/17			Overfelt FY17/18			Yerba Buena FY18/19		
		Hourly			Hourly			Hourly			Hourly		
		Hrs	Rate	Cost	Hrs	Rate	Cost	Hrs	Rate	Cost	Hrs	Rate	Cost
I - PROJECT FEASIBILITY PHASE													
A. Scoping, Scheduling, Funding, and Agreement													
	PW - R&B	100	145	\$14,500	60	152	\$9,120	0	148	\$0	0	157	\$0
	PW - ELECT	20	149	\$2,980	10	159	\$1,590	50	154	\$7,700	50	168	\$8,400
	PW - SECI	5	162	\$810	5	172	\$860	5	167	\$835	5	177	\$885
	PW - CMS	5	119	\$595	5	126	\$630	5	123	\$615	5	130	\$650
	PW - BUILDING	10	160	\$1,600	10	168	\$1,680	10	164	\$1,640	10	180	\$300
	DOT - SIGNAL/STREET LIGHT	10	83	\$830	5	88	\$440	5	86	\$430	5	91	\$455
	PBCE		149	\$0		159	\$0		154	\$0		168	\$0
	CMO												
	IT												
	Subtotal	150		\$21,315	95		\$14,320	75		\$11,220	75		\$10,690
B. Project Development													
	PW - R&B		145	\$0	60	152	\$9,120	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0	30	159	\$4,770	70	154	\$10,780	70	168	\$11,760
	PW - SECI		162	\$0	5	172	\$860	5	167	\$835	5	177	\$885
	PW - CMS		119	\$0	2	126	\$252	2	123	\$246	2	130	\$260
	PW - BUILDING		160	\$750	20	168	\$3,360	20	164	\$3,280	20	180	\$3,600
	DOT - SIGNAL/STREET LIGHT		83	\$0	20	88	\$1,760	20	86	\$1,720	20	91	\$1,820
	PBCE		149	\$0		159	\$0		154	\$0		168	\$0
	CMO												
	IT												
	Subtotal	0		\$750	137		\$20,122	117		\$16,861	117		\$18,325
C. Environmental Review and Permit													
	PW - R&B		145	\$0	20	152	\$3,040	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0		159	\$0	10	154	\$1,540	10	168	\$1,680
	PW - SECI		162	\$0	10	172	\$1,720	10	167	\$1,670	10	177	\$1,770
	PW - CMS		119	\$0		126	\$0		123	\$0		130	\$0
	PW - BUILDING		160	\$0		168	\$0		164	\$0		180	\$0
	DOT - SIGNAL/STREET LIGHT		83	\$0		88	\$0		86	\$0		91	\$0
	PBCE		149	\$0	20	159	\$3,180	20	154	\$3,080	20	168	\$3,360
	CMO												
	IT												
	Subtotal	0		\$0	50		\$7,940	40		\$6,290	40		\$6,810
D. Fees, Permits, Other Expenses													
	PW - R&B		145	\$0	5	152	\$760	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0		159	\$0	5	154	\$770	5	168	\$840
	PW - SECI		162	\$0	10	172	\$1,720	10	167	\$1,670	10	177	\$1,770
	PW - CMS		119	\$0		126	\$0		123	\$0		130	\$0
	PW - BUILDING		160	\$0		168	\$0		164	\$0		180	\$0
	DOT - SIGNAL/STREET LIGHT		83	\$0		88	\$0		86	\$0		91	\$0
	PBCE		149	\$0	10	159	\$1,590	10	154	\$1,540	10	168	\$1,680
	CMO						\$0						
	IT												
	Subtotal	0		\$0	25		\$4,070	25		\$3,980	25		\$4,290

REVISED EXHIBIT B (continued)

ESUHSD Community Wifi Deployment - Estimated City's Support Cost - Program Level Estimate (+/- 35%)	Resources	Current FY			James Lick FY16/17			Overfelt FY17/18			Yerba Buena FY18/19		
		Hourly		Cost	Hourly		Cost	Hourly		Cost	Hourly		Cost
		Hrs	Rate		Hrs	Rate		Hrs	Rate		Hrs	Rate	
II - PLANNING/DESIGN PHASE													
A. Design/Engineering Support Services													
	PW - R&B		145	\$0	100	152	\$15,200	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0	200	159	\$31,800	200	154	\$30,800	200	168	\$33,600
	PW - SECI		162	\$0	20	172	\$3,440	20	167	\$3,340	20	177	\$3,540
	PW - CMS		119	\$0	50	126	\$6,300	20	123	\$2,460	20	130	\$2,600
	PW - BUILDING		160	\$0	100	168	\$16,800	20	164	\$3,280	20	180	\$3,600
	DOT - SIGNAL/STREET LIGHT		83	\$0	100	88	\$8,800	50	86	\$4,300	50	91	\$4,550
	PBCE		149	\$0	5	159	\$795	5	154	\$770	5	168	\$840
	CMO												
	IT												
	Subtotal		0	\$0	575		\$83,135	315		\$44,950	315		\$48,730
B. Project Management													
	PW - R&B		145	\$0	300	152	\$45,600	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0		159	\$0	200	154	\$30,800	200	168	\$33,600
	PW - SECI		162	\$0		172	\$0		167	\$0		177	\$0
	PW - CMS		119	\$0		126	\$0		123	\$0		130	\$0
	PW - BUILDING		160	\$0		168	\$0		164	\$0		180	\$0
	DOT - SIGNAL/STREET LIGHT		83	\$0		88	\$0		86	\$0		91	\$0
	PBCE		149	\$0		159	\$0		154	\$0		168	\$0
	CMO							800	87.5	\$70,000			
	IT												
	Subtotal		0	\$0	300		\$45,600	1000		\$100,800	200		\$33,600
C. Field Investigation													
	PW - R&B		145	\$0	40	152	\$6,080	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0	150	159	\$23,850	190	154	\$29,260	190	168	\$31,920
	PW - SECI		162	\$0	10	172	\$1,720	10	167	\$1,670	10	177	\$1,770
	PW - CMS		119	\$0	20	126	\$2,520	20	123	\$2,460	20	130	\$2,600
	PW - BUILDING		160	\$0	100	168	\$16,800	50	164	\$8,200	50	180	\$9,000
	DOT - SIGNAL/STREET LIGHT		83	\$0	100	88	\$8,800	100	86	\$8,600	100	91	\$9,100
	PBCE		149	\$0		159	\$0		154	\$0		168	\$0
	CMO						\$0			\$0			
	IT												
	Subtotal		0	\$0	420		\$59,770	370		\$50,190	370		\$54,390
III - INSTALLATION PHASE													
A. Construction Management													
	PW - R&B		145	\$0	50	152	\$7,600	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0		159	\$0	50	154	\$7,700	50	168	\$8,400
	PW - SECI		162	\$0		172	\$0		167	\$0		177	\$0
	PW - CMS		119	\$0	100	126	\$12,600	100	123	\$12,300	100	130	\$13,000
	PW - BUILDING		160	\$0		168	\$0		164	\$0		180	\$0
	DOT - SIGNAL/STREET LIGHT		83	\$0		88	\$0		86	\$0		91	\$0
	PBCE		149	\$0		159	\$0		154	\$0		168	\$0
	CMO									\$0			
	IT												
	Subtotal		0	\$0	150		\$20,200	150		\$20,000	150		\$21,400
B. Construction Inspection													
	PW - R&B		145	\$0		152	\$0		148	\$0		157	\$0
	PW - ELECT		149	\$0	50	159	\$7,950	50	154	\$7,700	50	168	\$8,400
	PW - SECI		162	\$0	30	172	\$5,160	30	167	\$5,010	30	177	\$5,310
	PW - CMS		119	\$0	200	126	\$25,200	200	123	\$24,600	200	130	\$26,000
	PW - BUILDING		160	\$0	20	168	\$3,360	20	164	\$3,280	20	180	\$3,600
	DOT - SIGNAL/STREET LIGHT		83	\$0	50	88	\$4,400	50	86	\$4,300	50	91	\$4,550
	PBCE		149	\$0	5	159	\$795	5	154	\$770	5	168	\$840
	CMO												
	IT												
	Subtotal		0	\$0	355		\$46,865	355		\$45,660	355		\$48,700
C. Other construction related services													
	PW - R&B		145	\$0	5	152	\$760	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0	5	159	\$795	10	154	\$1,540	10	168	\$1,680
	PW - SECI		162	\$0	5	172	\$860	5	167	\$835	5	177	\$885
	PW - CMS		119	\$0	10	126	\$1,260	10	123	\$1,230	10	130	\$1,300
	PW - BUILDING		160	\$0	5	168	\$840	5	164	\$820	5	180	\$900
	DOT - SIGNAL/STREET LIGHT		83	\$0	5	88	\$440	5	86	\$430	5	91	\$455
	PBCE		149	\$0		159	\$0		154	\$0		168	\$0
	CMO												
	IT												
	Subtotal		0	\$0	35		\$4,955	35		\$4,855	35		\$5,220

REVISED EXHIBIT B (continued)

ESUHS Community Wifi Deployment - Estimated City's Support Cost - Program Level Estimate (+/- 35%)	Resources	Current FY			James Lick FY16/17			Overfelt FY17/18			Yerba Buena FY18/19		
		Hourly			Hourly			Hourly			Hourly		
		Hrs	Rate	Cost	Hrs	Rate	Cost	Hrs	Rate	Cost	Hrs	Rate	Cost
IV - CLOSE-OUT PHASE													
	PW - R&B		145	\$0	30	152	\$4,560	0	148	\$0	0	157	\$0
	PW - ELECT		149	\$0	10	159	\$1,590	40	154	\$6,160	40	168	\$6,720
	PW - SECI		162	\$0	5	172	\$860	5	167	\$835	5	177	\$885
	PW- CMS		119	\$0	20	126	\$2,520	20	123	\$2,460	20	130	\$2,600
	PW - BUILDING		160	\$0	5	168	\$840	5	164	\$820	5	180	\$900
	DOT - SIGNAL/STREET LIGHT		83	\$0	10	88	\$880	10	86	\$860	10	91	\$910
	PBCE		149	\$0		159	\$0		154	\$0		168	\$0
	CMO												
	IT												
	Subtotal		0	\$0	80		\$11,250	80		\$11,135	80		\$12,015
	TOTAL PER FY		150	\$22,065	2,222		\$318,227	2,562		\$315,941	1,762		\$264,170

														TOTAL HRS PER GROUP	TOTAL COST PER GROUP
Public Works - Road and Bridges	PW - R&B	100	145	\$14,500	670	148	\$101,840	0	152	\$0	0	157	\$0	770	\$116,340
Public Works - Electrical	PW - ELECT	20	149	\$2,980	455	154	\$72,345	875	159	\$134,750	875	168	\$147,000	2,225	\$357,075
Public Works - Structural Engineering and Code Inspection	PW - SECI	5	162	\$810	100	167	\$17,200	100	172	\$16,700	100	177	\$17,700	305	\$52,410
Public Works - Construction Management and Inspection	PW- CMS	5	119	\$595	407	123	\$51,282	377	126	\$46,371	377	130	\$49,010	1,166	\$147,258
Public Works - Building	PW - BUILDING	10	160	\$2,350	260	164	\$43,680	130	168	\$21,320	130	180	\$21,900	530	\$89,250
Transportation - ITS/Signal/Street Light	DOT - SIGNAL/STREET LIGHT	10	83	\$830	290	86	\$25,520	240	88	\$20,640	240	91	\$21,840	780	\$68,830
Plan, Building and Code Enforcement	PBCE	0	149	\$0	40	154	\$6,360	40	159	\$6,160	40	168	\$6,720	120	\$19,240
City Manager Office	CMO			\$0			\$0			\$70,000			\$0	0	\$70,000
Information Technology	IT			\$0			\$0			\$0			\$0	0	\$0
	TOTAL PER FY	150		\$22,065	2,222		\$318,227	1,762		\$315,941	1,762		\$264,170	5,896	\$920,403

Notes:
1. This program level estimate does not include the City's labor hours to review and issue Planning and Building Permits for work on School's Buildings.
2. The estimate does not include labor hours from ITD.

REVISED EXHIBIT C

Attendance Area	Smart WAVE Installation (includes Supplemental Services and Year 1 Maintenance)	Project Delivery (City Staff)	Contingency	Ongoing Maintenance and Support	Total Project Cost
James Lick (Actual)	\$971,115	\$200,000	\$101,640	\$179,100	\$1,451,855
Overfelt (Revised)	\$1,411,596	\$315,941	\$0	\$297,600	\$2,025,137
Yerba Buena (Revised #)	\$1,411,596	\$315,941	\$0	\$297,600	\$2,025,137
TOTAL	\$3,794,307	\$831,882	\$101,640	\$774,300	\$5,502,129

Yerba Buena revised estimate based on Overfelt revised estimate.

Funding and Funding Gap

Revised total project cost estimate for three attendance areas	\$5,502,129
Contingency	\$ 200,000
TOTAL	<u>\$5,702,129</u>
Revised District Funding	<u>\$4,700,000</u>
Revised Funding Gap	<u>\$1,002,129</u>

REVISED EXHIBIT D

FIRST AMENDMENT TO THE AGREEMENT FOR EAST SIDE UNION HIGH SCHOOL DISTRICT COMMUNITY WiFi DEPLOYMENT BETWEEN THE CITY OF SAN JOSÉ AND SMARTWAVE TECHNOLOGIES LLC

This First Amendment to the Agreement for East Side Union High School District (ESUHSD) Community WiFi Deployment by and between the City of San José, a municipal corporation (hereinafter “City”), and SmartWAVE Technologies LLC, a Georgia limited liability company (hereinafter “Contractor”), is entered into on the date of execution by City (“Effective Date”). Each of City and Contractor are sometimes referred to as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS on October 5, 2016, City and Contractor entered into an agreement entitled “Agreement for East Side Union High School District Community WiFi Deployment” (“Agreement”); and

WHEREAS, City and Contractor now wish to amend the Agreement to expand the wireless network to the William C. Overfelt High School attendance area; clarify maintenance, support, and access protocols and procedures; and increase the maximum compensation by \$1,323,811 for a revised not-to-exceed contract amount of \$2,961,051;

NOW THEREFORE, the Parties agree to amend the Agreement as follows:

1. Section 8, entitled “Compensation,” is hereby amended in its entirety to read as set forth below:

8. COMPENSATION

City shall pay Contractor an amount not to exceed **Two Million Nine Hundred Sixty-One Thousand Fifty-One Dollars (\$2,961,051)** for two attendance areas, including supplemental services for in-scope work and network maintenance, for the Initial Term (“Maximum Compensation”). The terms, rates, and schedule of payment are set forth in the attached Revised Exhibit B, entitled “Compensation/Payment Schedule.” Contractor shall submit to City invoices at the completion of each milestone that include a breakdown of Services as provided in the attached Revised Exhibit B. City will make payments to Contractor within thirty (30) days after the date of approval of each invoice. City will make payments when due in the form of a check, cashier’s check, or wire transfer drawn on a U.S. financial institution.

2. Section 2.4, entitled “Retroactive Services,” is hereby added to the Agreement as set forth below:

2.4. Retroactive Services

Contractor provided out of scope services prior to approval through an executed Amendment. Upon approval and execution of this First Amendment that incorporates the revised scope of

REVISED EXHIBIT D (Continued)

services, City will compensate the Contractor for those services in accordance with the terms of the First Amendment. However, in no event will the City compensate the Contractor for services performed before January 22, 2018.

- 3. Exhibit A, entitled "Scope of Work," is hereby amended to read as set forth in the Revised Exhibit A, which is attached hereto and incorporated herein.
- 4. Appendix A3, entitled "Tentative Project Schedule" is hereby amended as set forth in Addendum #1 to Appendix A3, which is attached hereto and incorporated herein.
- 5. Appendix A5, entitled "Price List" is hereby amended and restated as set forth in the Amended and Restated Appendix A5, which is attached hereto and incorporated herein.
- 6. Exhibit B, entitled "Compensation/Payment Schedule," is hereby amended to read as set forth in the Revised Exhibit B, which is attached hereto and incorporated herein.

All terms and conditions of the original Agreement not expressly modified by this First Amendment shall remain unchanged and in full force and effect.

WITNESS THE EXECUTION HEREOF on the day and year set forth beneath the respective names below.

City of San José
a municipal corporation

SmartWAVE Technologies LLC
a Georgia limited liability company

By: _____

By: _____

Name: _____

Al Brown

Title: _____

President/CEO

Date: _____

Date: _____

APPROVED AS TO FORM:

Senior Deputy City Attorney

REVISED EXHIBIT D (Continued)

**REVISED EXHIBIT A
SCOPE OF WORK**

The following Scope of Work (“SOW”) defines the principal activities and responsibilities of Contractor and the City of San José (hereinafter “City”) for implementation of the East Side Union High School District (“ESUHSD”) Community WiFi Deployments (the “Project”).

1. INTRODUCTION

- 1.1. This Agreement is in conformance with the separate Partnership and Funding Agreement between the City of San José and ESUHSD relating to District’s Payment for City’s Expenses to Establish and Maintain a Community Wireless Network in the District.
- 1.2. Contractor shall plan, design and install an outdoor WiFi wireless network to serve the ESUHSD specified school district attendance areas.
- 1.3. Contractor shall approach Project by organizing the work effort into manageable phases, each with a series of activities and tasks organized by available resources/people to perform these tasks. Assumptions for completing the work according to the schedule will also be prepared as well as tasks for each phase of the project. Ongoing review of the work plan by City and Contractor is required to ensure successful implementation of the Project. The phases currently planned are the school district attendance areas listed below:
 - Attendance Area 1: James Lick High School (included in Original Agreement)
 - Attendance Area 2: William C. Overfelt High School (added in First Amendment)
 - Attendance Area 3: Yerba Buena High School (*subject to Council approval and execution of a Change Order or Amendment*)
- 1.4. This SOW lays the groundwork for future optional phases based on Council approval and City issuance of a Change Order or Amendment.

2. CITY’S RESPONSIBILITIES

- 2.1. City will provide Contractor full and supervised access to the City-owned facilities and appropriate personnel that are required to accomplish their tasks during working hours.
- 2.2. City will provide the street light post information or standard plans that dictate the dimensions, sizes, and material specifications.
- 2.3. City will be responsible for inspections after installation of the System on City-owned facilities. The equipment purchased and installed under this Agreement on City facilities is the property of the City.

REVISED EXHIBIT D (Continued)

- 2.4. City will be responsible for the associated cost of providing ongoing power to the equipment.
- 2.5. City will be responsible for providing Internet Services to a location within the area through the City Fiber or Wireless Network infrastructure.
- 2.6. City will provide existing hosted wireless controller and wireless network management server platform that Contractor's provided licenses will be added to in support of the network.

3. CONTRACTOR'S RESPONSIBILITIES

- 3.1. Contractor will provide all labor, materials, tools, equipment, software, transportation, hauling and stockpiling, incidentals, required to perform all operations necessary to furnish and install the System required to perform all intended functions.
- 3.2. Contractor shall conduct a survey of the coverage area and finalize WiFi network design to identify and establish the City assets required for mounting of equipment. Contractor shall provide a list of City assets (i.e., light poles, traffic signals, towers, community centers, and other City-owned structures, etc.) to the City.
- 3.3. Installation of equipment on ESUHSD-owned facilities is not part of this scope, unless authorized in writing in the form of a Change Order or Amendment.
- 3.4. Contractor shall be responsible for all permits, fees, and deposits as described in Section 7 below.
- 3.5. Contractor shall provide an experienced project team with a single point of contact to complete all tasks and activities to deliver the functionality for the System.
 - 3.5.1. Project Manager (PM) – Contractor shall manage and plan the project according to requirements and time schedule, including test and handover activities. The PM will ensure project objectives are met within time and quality constraints. The PM will submit project and progress reports and participate in project and progress meetings either remotely during normal Contractor business hours, or on-site, if needed.
 - 3.5.2. Logistics & Service Coordinator – Contractor shall be responsible for the procurement, logistics, and delivery coordination of the equipment and services. Will be responsible for post sales service coordination and serves as the point of contact between City, Contractor's remote system support technicians, and on site third party service providers.
 - 3.5.3. Senior Design Engineer – Contractor shall be responsible for all design aspects of the System which include design functioning layout according to City's specifications and final layout drawings and will install and configure all necessary software. Will provide remote after sales service support in coordination with on-site service support.

REVISED EXHIBIT D (Continued)

- 3.5.4. Field Technician – Contractor shall be responsible for initial project site walk and final System commissioning.
- 3.5.5. Installation & Service Support Manager/Team – Contractor shall be responsible for ensuring that the System is installed and serviced according to the City’s requirements. Will manage all coordination between the Project Manager and service and installation support team.
- 3.6. Contractor will furnish and install ESUHSD WiFi System software, hardware, and related services necessary to obtain internet access for the specified Project areas.
- 3.7. Contractor shall provide system warranty service to include all necessary labor and parts for one (1) year from date the System is accepted by the City as specified under warranty section.
- 3.8. Contractor shall provide a schedule to the City within 15 calendar days after the issuance of the Change Order. Contractor will provide a phased approach and Project implementation schedule for each school attendance area.
- 3.9. Attend regular meetings with the City either on-site or remotely during Contractor’s normal business hours, for the design and construction phase to update project schedule and any other relevant information. Contractor’s Project Manager shall coordinate and schedule project review meetings with the City to discuss progress, problems, and review project status. Such meetings must be at least every two weeks for the duration of the project, unless otherwise required or revised by the Parties.
- 3.10. Provide for City’s review design plans for installation of the equipment, including maps showing locations of equipment; information for each equipment location: pole number, street address, GPS coordinates, and information of equipment to be installed; technical reports, layout drawings, design documents, construction contract drawings and construction contract specifications (“Design Submittal”).
- 3.11. Furnish for City’s review and approval the final Design Submittals including: a propagation Map in Google Earth format showing 2.4 GHz and 5 GHz client coverage, an AP placement map, and spreadsheet showing Radio S/N, MAC, location, type of power. Predictive analysis of coverage area for 2.4 GHz and 5 GHz will be provided at completion of the Planning Phase, Design Phase, and Installation Phase.
- 3.12. Provide all power tapping designs to City for review, including power tapping from photocell or any other alternate locations. Existing LED fixtures include hard-wired controllers at the photocell location. If new controllers and/or luminaire are required to tap power from the photocell location, and if new mast arms are required, the Contractor will provide under a Supplemental Work Order Form (Exhibit F).
- 3.13. Contractor shall perform the Voltage Drop and Load Analyses for connecting new wifi equipment to existing electrical circuits in conformance with National Electrical Code.

REVISED EXHIBIT D (Continued)

- 3.14. Contractor shall coordinate with City and PG&E as soon as practicable during the design to ensure proper and adequate power for all WiFi equipment, and shall furnish and install all required work and materials for equipment that is metered, as a Supplemental Work Order Form (Exhibit F).
- 3.15. Contractor shall coordinate with City and PG&E and assist with the completion and execution of any required Electric Service Agreement with PG&E. Any required Electric Service Agreement with PG&E must be completed before the Final Acceptance Testing.
- 3.16. The equipment components and their installation must comply with all laws, ordinances, codes, rules, and regulations of public authorities having jurisdiction over this part of the work.
- 3.17. It will be the responsibility of the Contractor to meet these and other current technical performance, and safety standards that are applicable to all components and to the entire System, even when not specifically referenced.
- 3.18. In addition, all electrical equipment and materials used on this Project will be U.L. labeled, listed, and approved for the intended application.
- 3.19. Contractor shall perform all work in conformance with applicable Standards as described in Section 4 below.

4. WORK STANDARDS

- 4.1. Contractor shall use and exercise due care, caution, skill, and expertise in performing any work under this Agreement and shall take all reasonable steps to safeguard work site areas, including, without limitation, existing facilities and property.
- 4.2. Contractor shall perform the following analyses:
 - 4.2.1. Structural adequacy, space adequacy, and aesthetic for mounting of WiFi equipment on City's facilities. If a structural analysis report is required, Contractor can provide under a Supplemental Work Order Form (Exhibit F).
 - 4.2.2. Power requirements and connections of WiFi equipment to existing City's facilities, including coordination with PG&E to determine if WiFi equipment will be metered or not metered.
- 4.3. Contractor shall perform all work in conformance with applicable California Building Code.
- 4.4. Contractor shall perform all work in conformance with the City's Standard Details and Specifications and in conformance with the following standards:
 - California Electric Code as adopted by the State of California
 - Cal OSHA

REVISED EXHIBIT D (Continued)

- NFPA 70E
 - National Electrical Code as adopted by the State of California
- 4.5. Contractor has read and is familiar with the 1992 Standard Specifications for Public Works Construction, the 1992 Standard Details and subsequent addenda or special provisions for Public Works Construction, and, except as otherwise expressly required under the terms of this Agreement, agrees to perform all work under this Agreement in accordance with the 1992 Standard Specifications for Public Works Construction, the 1992 Standard Details and subsequent addenda or special provisions for Public Works Construction: <http://www.sanjoseca.gov/index.aspx?nid=3463>.
- 4.6. Contractor shall plan, organize, and perform its work under this Agreement in the manner that results in the least amount of traffic disruption. Whenever applicable, Contractor shall comply with the principles and standards set forth in the latest version of the "California Manual of Uniform Traffic Control devices (MUTCD)." Contractor shall provide all signs, barricades, arrowboards, lights, high-level flag trees, flag personnel and other devices, materials, or personnel that may be needed in connection with the safe and careful performance of the work allowed under this Agreement.
- 4.7. Contractor hereby represents and warrants that Contractor shall perform no excavation, trenching, coring, boring, or digging into the ground or installation of any equipment or other material into the ground, or any other underground work in connection with the work to be performed or Services to be provided by Contractor under this Agreement and shall not otherwise disturb or disrupt the operation or maintenance of any sanitary sewers, storm drains, gas or water mains, or other underground conduits, cables or mains.
- 4.8. Contractor agrees to repair or replace to the satisfaction of the City, any facilities or property that City determines has been damaged, destroyed, defaced or otherwise injured as a result of the work performed or Services provided by Contractor under this Agreement.
- 4.9. If City facilities (electrical, water storm, sanitary sewer, etc.) are accidentally damaged, immediately notify the City inspector or their supervisor. If determined to be Contractor's fault, employ the appropriate licensed contractor to make repairs at no cost the City. Temporary repairs to damaged facilities shall be made immediately. Final repairs shall be made as soon as possible, but no later than three days from the date of damage. Traffic signal facility and communication asset damage repairs need to be completed within 24 hours.
- 4.10. If, during the course of the Project, the City's Project Manager determines that the public health, safety, or welfare requires a modification of or a departure from the **Plans and Specifications** or **Schedule of Performance**, the City's Project Manager shall have the authority to identify, specify, and delineate the modification or departure required, and Contractor shall perform the work allowed under this Agreement in accordance with the City-specified modification or departure. The City's Project Manager shall provide Contractor with a written description of the required modification or departure, the public

REVISED EXHIBIT D (Continued)

health, safety, or welfare issue necessitating the modification or departure, and the time within which Contractor shall make, complete, or maintain the modification or departure required.

- 4.11. Contractor acknowledges that City has made no warranties or representations regarding the fitness or suitability of any of City's property for the Project and that any performance of work or costs incurred by Contractor in provision of Services contemplated under this Agreement by Contractor is at Contractor's sole risk.

5. RIGHT TO USE/ACCESS CITY PROPERTY

- 5.1. Right to Use: City hereby grants the Contractor the right to use the City property as follows:

- 5.1.1. Contractor and its subcontractors shall have access to each WiFi equipment location for the purpose of installing the WiFi equipment on City street lights.
- 5.1.2. Contractor and its subcontractors shall have access to each LED fixture location for the purpose of replacing the existing street lights to LED fixtures and installing photoelectric units and adapters.

- 5.2. Access.

- 5.2.1. Installation of WiFi equipment, LED fixtures, and photoelectric unit and adapters: City hereby grants Contractor the right to use on a non-exclusive basis (i) each WiFi location for the purpose of installing WiFi equipment at City street light locations and (ii) each LED fixture location for the purpose of replacing the existing photoelectric unit and installing photoelectric adapters. Such right to use shall include:

- 5.2.1.1. non-exclusive right of ingress and egress from a public right-of-way to each WiFi equipment location and LED fixture location, including surround, property, for the purpose of installation of the WiFi equipment and photoelectric units and adapters in a manner consistent with the terms of this Agreement required for construction;
- 5.2.1.2. a right of access sufficient for Contractor and its subcontractors to install WiFi equipment and photoelectric units and adapters as applicable, including access to such wires and cables as required to connect the WiFi equipment and provide proper bonding and grounding at each City street light location; and
- 5.2.1.3. during the installation period, Contractor agrees to (1) keep WiFi equipment location in neat, clean, and orderly condition at all times, (2) not cause rubbish, garbage, or debris to accumulate or remain on or around any such location at any time, (3) not commit, suffer, or allow any acts to be done at or around such location in violation of any law,

REVISED EXHIBIT D (Continued)

regulation, agreement or rule, and (4) not use or allow the use of such location for any illegal or immoral purpose.

5.2.2. Access to WiFi Equipment:

5.2.2.1. During the term of the Agreement, the Contractor and its subcontractors are granted non-exclusive right of ingress and egress access to each WiFi equipment location in a public-right-of-way, seven (7) days a week, twenty four (24) hours a day for the purpose of maintaining and operating the WiFi equipment, provided however, (i) Contractor shall provide City with prior notification via email to the Department of Public Works Construction Management Section that the Contractor requires access to that WiFi equipment location, (ii) all work shall be in compliance with applicable traffic laws and restrictions, and (iii) work that impedes traffic lanes shall not be performed between the hours of 6:00 am – 9:00 am and 3:30 pm – 7:00 pm, local Pacific Time.

5.2.2.2. During the maintenance and operations period, Contractor agrees to (1) keep WiFi equipment location in neat, clean, and orderly condition at all times, (2) not cause rubbish, garbage, or debris to accumulate or remain on or around any such location at any time, (3) not commit, suffer, or allow any acts to be done at or around such location in violation of any law, regulation, agreement, or rule, and (4) not use or allow the use of such location for any illegal or immoral purpose.

5.2.3. City Observer: Contractor shall allow a representative of the City to observe any repair, maintenance, or removal work performed at any WiFi location or any other portion of the applicable property. The Parties agree that the presence (or lack of presence) of such observer shall not require Contractor or its subcontractor to change or delay scheduled work.

5.3. Relocation Event.

5.3.1. During the term of the Agreement, City may require permanent relocation of the WiFi equipment to a mutually agreeable location (“Relocation Event”) only in the event that (i) WiFi location is needed to accommodate the construction, installation, operation, or repair of any improvement desired by City or (ii) the WiFi equipment location is needed for City traffic control devices.

5.3.2. In connection with any Relocation Event, the Parties shall use reasonable efforts to identify a relocation site that is mutually acceptable.

5.3.3. In connection with any Relocation Event, Contractor and its subcontractors shall relocate the WiFi equipment at no cost to City.

REVISED EXHIBIT D (Continued)

6. PROJECT MANAGEMENT

- 6.1. Contractor will take responsibility for providing project management and implementation services for the System.
 - 6.1.1. Contractor shall provide a Project Manager who is responsible for the day-to-day management of the Project.
 - 6.1.2. Any addition to scope may increase the project timeline. Both the Contractor and City Project Managers will evaluate the impact to the Project Schedule if a Change Order is requested and approved.
 - 6.1.3. City and Contractor Project Managers will jointly coordinate day-to-day execution of the Project Schedule. City and Contractor Project Managers will collaboratively manage project scope, budgets, issues, risks, communications, and Change Orders.

- 6.2. Project Planning and Design:
 - 6.2.1. Project Schedule – Contractor shall maintain a detailed project schedule. The schedule shall include all task and responsibilities of the Project.
 - 6.2.2. Scope Management – Contractor shall develop a scope management plan which contains Project scope related activities from initial Project scope definition to execution activities, ensuring scope fulfillment according to plans and managing scope changes.
 - 6.2.3. Time Management – Contractor shall manage all activities related to time schedules, scheduling management, and time schedule deviation management to ensure project completion on agreed time schedule.
 - 6.2.4. Cost Management – Contractor shall manage activities in planning project cost and continuous Project cost control reporting.
 - 6.2.5. Quality Management – Contractor will provide quality management which includes planning of activities to monitor, control, and assure quality of Project performance within project organization and of project deliverables. During Project execution Project quality management is monitoring and controlling that defined quality activities are performed and measured against target levels.
 - 6.2.6. Human Resource Management – Contractor will provide human resource management which includes activities to establish project organization, acquiring and nomination of required resources and possible outsourcing principles. Human Resource Management includes organization management, mobilization / demobilization of resources, performance appraisal, health and safety issues, and resource needs for management during project execution.

REVISED EXHIBIT D (Continued)

- 6.2.7. Communication Management – Contractor will develop a communication management plan that includes planning, meeting, and management activities for preparation, distribution, storing, and disposition of project documentation. Communication management also includes the activities taking place within the Project to assure that all Project stakeholders are aware of all Project-related issues at all times.
- 6.2.8. Risk Management - Contractor shall manage risk throughout the Project including early risk identification, evaluation of risk quality – impact, planning of measures to eliminate or minimize the risk, monitoring and controlling of risk management activities, corrective actions to ensure trouble-free project execution and continuous risk reporting based on results (quality impact).
- 6.2.9. Procurement Management – Contractor shall manage procurement which includes planning, executing and controlling activities to assure that material and services needed to fulfill Project goal are ordered, expedited, forwarded and delivered on time schedule and within project cost baseline.
- 6.2.10. Integration Management – Contractor shall manage integration includes preparation of Project Plan, Project reporting and change control.
- 6.2.11. Stakeholder Management - Contractor shall assist the City to manage stakeholders which includes the processes required to identify the people, groups, or organizations that could impact or be impacted by the Project, and developing strategies for engaging stakeholders in Project decisions and execution.
- 6.2.12. Public Outreach – Contractor shall coordinate with ESUHSD and City to conduct, and assist when needed, the public outreach efforts, including attending public meetings, and preparing technical materials and project information materials.

7. PERMITS, FEES AND DEPOSITS

In connection with any work to be performed by Contractor under this Agreement:

- 7.1. Contractor shall obtain all applicable permits as are required by City to perform work described in this Agreement, which permits are more particularly described in Appendix A1," entitled, "Permits and Fees," attached hereto and incorporated fully herein by this reference, and shall comply with all of the terms and conditions set forth in these permits, including, without limitation, allowing City personnel to inspect the installation of the Contractor's Equipment on City property.
- 7.2. Contractor shall pay to City, in a timely manner, all applicable deposit fees, permit fees, and other fees or amounts required to be paid by Contractor to City in connection with obtaining permits or performing work under this Agreement, including without limitation the fees referenced in Appendix A1 and as required by any applicable federal, state, or local law, statute, ordinance, rule, or regulation.

REVISED EXHIBIT D (Continued)

8. TESTING

- 8.1. Contractor shall submit a test plan detailing how the tests are conducted and submit to City for review, comment, and approval.
- 8.2. Contractor shall revise the test plan until it is found acceptable by the City.
- 8.3. Contractor shall ensure that all equipment to be tested are ready for testing prior to the performance of the testing and the City's witnessing the tests.
- 8.4. Contractor understands that neither the witnessing of the test by the City or representative(s) of the City, not the waiving of the right to do so, will relieve the Contractor of the responsibility to furnish and install the work in accordance with the requirements of this project.

9. FINAL ACCEPTANCE TESTING

- 9.1. Contractor and City hereby acknowledge that certain testing, such as a point testing, are for a specific moment in time. Contractor is deploying an unlicensed wireless network, so there could be a case of interference at a test point that may be perfectly normal. The System allows for adjustments on interference. Since Contractor does not control the air space which can impact performance (i.e., high internet traffic or interference may cause slow performance), acceptance testing requirements shall be mutually agreed upon to account for these anomalies.
- 9.2. The Final System Acceptance Test shall occur at the completion of the entire System. Notwithstanding Section 9.1 above, the Final System Acceptance Test shall consist of a thirty (30) day test period of all system operations without failure of the equipment or software.
- 9.3. The purpose of the test period is to demonstrate that the total System (hardware, software, networking system, materials, and construction) is properly installed, is free from identified problems, exhibits stable and reliable performance, and complies with the requirements within this scope of work.
- 9.4. In the event of a failure during the Final System Acceptance Test, the Contractor shall replace or repair the equipment and the Project Manager shall restart the 30 day test period for the entire System, unless the City agrees the failed and replaced/repared equipment is not a major component and does not requires a restart of the 30 day test period for the entire System.
- 9.5. Resumption of the final System test for the remainder of the 30 day test period shall occur after satisfactory remedial action.

REVISED EXHIBIT D (Continued)

- 9.6. Final System Acceptance will occur upon successful completion of the Final System Acceptance Testing as described in Section 8 above. When Final System Acceptance occurs, the Parties will memorialize this event by promptly executing a Final System Acceptance Certificate (Appendix A4).
- 9.7. Contractor shall provide final records, including as-built drawings and documentation for all equipment and equipment locations before final acceptance.

10. WARRANTY AND MAINTENANCE

- 10.1. The Contractor shall provide a 12-month (one-year) warranty on all parts, materials, workmanship, and all related installation work and a 90-day warranty for software, commencing upon Final System Acceptance.
- 10.2. For clarity, the Parties agree that warranty as described in this Section is provided at no cost during the warranty period and separate from ongoing Technical Support services which are provided on annual cost basis as described in Section 11 below.
- 10.3. Warranty work shall be provided without cost to the City of San José. Costs (time and material) for repair or parts replacement, components, etc., damaged or rendered unserviceable due to apparent and provable misuse, abuse, vandalism, or negligence by City employees or the public, or by acts of God, e.g. floods, tornadoes, hail, etc., are excluded as a warranty item.
- 10.4. During the warranty period, the Contractor shall repair with new material or replace with new equipment, at no charge, any defective product. During the warranty period, updates and corrections to all equipment and software shall be furnished and installed by the Contractor at no charge to the City.
- 10.5. Contractor shall provide Warranty Support pursuant to Appendix A2 (Software & Hardware Warranty Support).
- 10.6. Contractor shall maintain and repair each and every WiFi equipment at no cost to City (except as specifically provided otherwise in this Agreement) and all damage to the applicable property that may result from any relocation or removal of a WiFi equipment or Contractor's exercise of any of the rights and privileges hereby granted, including, without limitation, damage to any walls, floors, ceilings, doors, or electrical systems in the applicable property to City's reasonable satisfaction. Maintenance and repair access shall conform to Section 5 "RIGHT TO USE/ACCESS CITY PROPERTY."
- 10.7. Contractor agrees to and shall: (1) keep each and every WiFi equipment location in neat, clean, and orderly condition at all times; (2) not cause or permit rubbish, garbage, debris, or graffiti to accumulate or remain on or around any WiFi equipment or property at any time; (3) not commit, suffer, or allow any acts to be done at or around any WiFi equipment or property in violation of any law, regulation, permit, or rule; and (4) not use or allow the use of any WiFi equipment or property for any illegal or immoral purpose.

REVISED EXHIBIT D (Continued)

11. TECHNICAL/CUSTOMER SUPPORT

- 11.1. The Contractor shall provide annual technical support to commence upon Final System Acceptance of the System, including:
 - 11.1.1. Network Monitoring, Optimization and Reporting,
 - 11.1.2. Repair and replacement of equipment, and
 - 11.1.3. Installation of software updates/upgrades.
- 11.2. Contractor shall provide City with one point of contact (i.e., designated Project Manager) for the duration of the System deployment and warranty period. During the entire term of the Agreement, Contractor's Project Manager shall respond to City's correspondence (calls, emails, etc.) within two (2) hours if received during normal business hours (8:00 am – 5:00 pm Monday – Friday Pacific Time). Correspondence received by Contractor outside of normal business hours shall be replied to no later than the following business day.
- 11.3. Contractor shall complete all repairs within 5 calendar days of notification by City of any issues. In the event of a power down situation due to pole knockdown, Contractor shall work with the City to restore power to the equipment/network as promptly as possible.
- 11.4. Contractor shall provide a phone number to call to request warranty, maintenance, and technical support service.

12. PROJECT SCHEDULE

- 12.1. Within 15 days of notice to proceed, Contractor shall submit to the City's Project Manager a schedule showing the timeline for the project with anticipated start and end dates and schedule for procurement of materials and equipment.
- 12.2. The tentative project schedule is attached as Appendix A3.
- 12.3. City reserves the right to extend within a reasonable time the schedule at no additional cost to the City.

13. AREAS FOR CONTRACTOR USE

- 13.1. The City right-of-way shall only be used for the purposes that are necessary to perform the required work.
- 13.2. The Contractor shall not occupy the right-of-way or allow others to occupy the right-of-way, for purposes that are not necessary to perform the required work.
- 13.3. Temporary storage of equipment and materials on City property, to the extent possible, may be arranged with the City's Project Manager.

REVISED EXHIBIT D (Continued)

- 13.4. The Contractor shall secure, at his own expense, any additional area required for storage of equipment or materials or for other purposes.
- 13.5. The Contractor shall have written approval from the property owner before storage of any material or equipment can occur on private property. A copy of the written approval shall be provided to the City's Project Manager.
- 13.6. Use of Contractor's work areas and City-owned property shall be at the Contractor's own risk, and the City will not be held liable for any damage or loss of materials or equipment located within such areas.

14. DELIVERABLES

- 14.1. Project Schedule and Project Management Plan
- 14.2. Design Submittals including: Propagation Map in Google Earth format showing 2.4 GHz and 5 GHz client coverage, an AP placement map, and spreadsheet showing Radio S/N, MAC, location, and type of power. Predictive analysis of coverage area for 2.4 GHz and 5 GHz will be provided at completion of the Planning Phase, Design Phase, and Installation Phase.
- 14.3. List of City assets to be used for mounting (i.e., street lights, traffic signals, etc.)
- 14.4. Delivery & Installation of all software and hardware
- 14.5. Communication Management Plan
- 14.6. Permits required
- 14.7. Test Plan
- 14.8. Final records and as-built Drawings and documentation
- 14.9. Warranty & Maintenance Support contact information

REVISED EXHIBIT D (Continued)

**ADDENDUM #1 TO APPENDIX A3
TENTATIVE PROJECT SCHEDULE**

The following preliminary schedule is for deployment of the second attendance area at William C. Overfelt High School. This preliminary schedule reflects tasks in the appropriate order by phase with estimated dates and shall be revised accordingly based on elapsed time if necessary.

Tasks	Estimated Begin Date	Estimated End Date
Council Approval	3/13/18	3/13/18
Execution of First Amendment to Agreement	3/14/18	3/14/18
Network Planning Phase	1/22/18	4/16/18
Gather GIS Info and Plot on Map	1/22/18	2/2/18
Provide Preliminary Asset Selection	2/20/18	2/26/18
Identify Network Infrastructure Requirements	2/27/18	3/5/18
Identify Ingress Points	2/27/18	3/5/18
Perform Circuit Tracing for Prelim Assets	2/27/18	4/16/18
Create High Level Design Document	3/6/18	3/12/18
Network Design Phase	3/13/18	5/14/18
Conduct RF Sweep at each RAP location	3/13/18	3/19/18
Perform drive testing of coverage area	3/20/18	3/26/18
Provide survey results	3/27/18	4/2/18
Define network configuration requirements	4/3/18	4/16/18
Create config sheet with design info	4/17/18	4/30/18
Create updated BOM and estimate for Mesh and CIL	4/17/18	4/18/18
Create BOM and estimate for PTP Link	4/17/18	4/18/18
Order/Inventory Wireless Equipment	4/19/18	5/2/18
Participate in design review meetings as necessary	5/1/18	5/7/18
Review/Finalize Asset Selection	5/8/18	5/14/18
Finalize Network Architecture	5/8/18	5/14/18
Installation Phase	5/15/18	8/13/18
Configure/install vSCG and SCI	5/15/18	5/21/18
Configure/install Core Equipment	5/15/18	5/21/18
Configure/Install Fiber Gateway Nodes	5/15/18	6/5/18
Perform Street Light Remediation	5/15/18	6/26/18
Configure/Install BSU Equipment	5/22/18	6/26/18
Configure/Install SU Gateway Nodes	5/22/18	7/11/18
Configure/Install Mesh Nodes	5/22/18	8/1/18
Perform post installation testing	7/19/18	8/8/18
Produce as-built docs	8/9/18	8/13/18
Transition to Operational Support	8/14/18	8/14/18

REVISED EXHIBIT D (Continued)

**AMENDED AND RESTATED APPENDIX A5
PRICE LIST**

Estimate for One Attendance Area as of October 5, 2016

The below pricing is a preliminary estimate for one attendance area based on a 300 pole installation as of October 5, 2016. The final cost shall be determined when the survey/design process is completed and based on the specific mounted assets and topography of the area. Parts are subject to discontinuation and replacement with comparable next generation parts. City is charged at Contractor cost plus 20% markup on

	Description	Mfg. Part#	Qty	U/M	Unit Price	Extended Price
Materials/Equipment						
	P300, single unit, outdoor 802.11ac 2X2:2 bridge, 5 GHz internal antenna, optional antenna support, one Ethernet port, PoE input	901-P300-xx01	19	EA	\$777	\$14,763.00
	One high gain directional antenna, dual-polarized 21dBi gain and 10degrees 3dBm beam width	911-2101-DP01	19	EA	\$195	\$3,705.00
	P300, single unit, outdoor 802.11ac 2X2:2 bridge, 5 GHz internal antenna, optional antenna support, one Ethernet port, PoE input	901-P300-xx01	75	EA	\$777	\$58,275.00
	ZoneFlex T300, omni, outdoor access point, 802.11ac 2x2:2 internal BeamFlex+, dual band concurrent, one Ethernet port, PoE input	901-T300-xx01	300	EA	\$842	\$252,600.00
	Photocell Power Cable - 6 ft, 48V, Stripped Ends	SWFP287	300	EA	\$132	\$39,600.00
	Owl-PoE 48VDC, 10' Cat5 Cable 120" cable assembly	FP287A-120-ACN	225	EA	\$228	\$51,300.00
	5 Port Gigabit 48VDC POE Switch for Wireless Gateway Locations	TP-SW5GNC- OUT48	75	EA	\$276	\$20,700.00
	OD Enclosure TP-SW 5 & 8 port POE switch	TP-SW-8x5	75	EA	\$34	\$2,550.00
	CAT5e Cabling Materials for wiring BSUs	SWCAT5E0D	19	EA	\$117	\$2,223.00
	POE 8-port Switch, Ruggedized, 100/1000Mbps - Assume 3 BSUs per Switch	SWTSPOE8	7	EA	\$197	\$1,379.00
	POE Surge Protection 100/1000Mbps	SWCMJPOE8a	394	EA	\$72	\$28,368.00
	Radio Mounting Hardware - Pole Mounts	SWMNTPL	75	EA	\$90	\$6,750.00
	Radio Mounting Hardware - Non-penetrating SLED Mounts - 10ft Mast	SWSLED10	7	EA	\$300	\$2,100.00
	Shipping, grounding, weatherproofing, miscellaneous and consumable items	SWMISC	1	EA	\$12,318	\$12,318.00
	Materials/Equipment Subtotal					\$496,631.00
Licenses/Support						
	Ruckus SZ100 and VSCG License Upgrade for 1 AP	L09-0001-SG00	300	EA	\$65	\$19,500.00
	Ruckus Smartcell Insight Management Software License for 1 AP	909-SCIL-0000	300	EA	\$10	\$3,000.00
	Partner WatchDog Support for vSCG License supporting 1 Ruckus AP - 1 year	S02-0001-1LSG	300	EA	\$20	\$6,000.00*
	Partner WatchDog Support for SmartCell Insight, Single AP - 1 Year	802-SCIL-1L00	300	EA	\$3	\$900.00*
	SmartWAVE Technical Support - Network Monitoring, Optimization and Reporting - 1 Year	SWSPPT	300	EA	\$225	\$67,500.00*
	Licenses/Support Subtotal					\$96,900.00
					Materials/Equipment	\$496,631.00
					Licenses/Support	\$394,500.00
					Professional Services	\$230,345.17
					Tax (8.75%)	\$43,455.21
					GRAND TOTAL	\$1,164,931.38

REVISED EXHIBIT D (Continued)

Estimate for One Attendance Area as of November 18, 2017

The below pricing is a preliminary estimate for one attendance area based on a 300 pole installation as of January 22, 2018. The final cost shall be determined when the survey/design process is completed and based on the specific mounted assets and topography of the area. Parts are subject to discontinuation and replacement with comparable next generation parts.

Description	Mfg. Part#	Qty	U/M	Unit Price	Extended Price
Materials/Equipment					
Mimosa 5 GHz PtP Radio, N-type Connectors	B5c	12	EA	\$599.00	\$7,188.00
29dBi 4.940-5.875GHz 2' Dual Slant Dish	HDDA5W-29-DP2	12	EA	\$274.00	\$3,288.00
Coax Jumper NM to NM 6'	CA400-NM-NM-6	24	EA	\$17.00	\$408.00
Mimosa Base Station 5GHz Quad Panel 14 dBi 802.11ac AP	A5-360-14	11	EA	\$1,139.00	\$12,529.00
Mimosa CPE 5GHz, Integrated 20dBi antenna,	C5	75	EA	\$119.00	\$8,925.00
Mimosa Gigabit Network Interface Device for C5	NID	75	EA	\$12.00	\$900.00
Mimosa J-Mount with extra twist	J-Mount	75	EA	\$12.00	\$900.00
ZoneFlex T300, omni, outdoor access point, 802.11ac 2x2:2 internal BeamFlex+, dual band concurrent, one Ethernet port, PoE input	901-T300-xx01	300	EA	\$842.00	\$252,600.00
Photocell Power Cable - 6 ft, 48V, Stripped Ends (Wireless RAPs)	SWFP288	75	EA	\$132.00	\$9,900.00
Owl-PoE 48VDC, 10' Cat5 Cable 120" cable assembly (MAPs)	FP287A-120-ACN	225	EA	\$228.00	\$51,300.00
Transition Networks Managed Hardened Gigabit Ethernet Switch (8) 10/100/1000Base-T PoE+ Ports + (4) 100/1000Base-X SFP Ports	SISPM1040-384-LRT-B	10	EA	\$1,373.00	\$13,730.00
Transition Networks 48 VDC Industrial Power Supply - 110 V AC, 220 V AC Input Voltage RAIL	25104	10	EA	\$336.00	\$3,360.00
Microsemi 4+1 Port Outdoor PoE Switch, 802.3at 60W (BSU and PTP)	PDS-104GO/AC	2	EA	\$926.00	\$1,852.00
Microsemi Mounting Brackets for PDS-104GO (BSU and PTP)	PD-OUT/MBK/S	2	EA	\$42.00	\$84.00
Single Mode SFP Module for up to 20KM	S-31DLC20D	10	EA	\$102.00	\$1,020.00
5 Port Gigabit 48VDC PoE Switch (Wireless RAPs)	SW5GNC-OUT48	75	EA	\$426.00	\$31,950.00
Mounting Brackets for Outdoor Units (Wireless RAPs)	PD-OUT/MBK/G	75	EA	\$46.00	\$3,450.00
CAT5e Cabling Materials for wiring BSUs and PTP Radios	SWCAT5E0D	28	EA	\$117.00	\$3,276.00
POE Surge Protection 100/1000Mbps	SWCMJPOE8a	46	EA	\$72.00	\$3,312.00
Radio Mounting Hardware - Pole Mounts	SWMNTPL	398	EA	\$90.00	\$35,820.00
Weathering, patch cables, shipping and consumable items	SWMISC	1	EA	\$7,664.00	\$7,664.00
Luco P-7 Wireless Controller	LucoP7	300	EA	\$190.00	\$57,000.00
7-Pin Photocell Receptacle	LP7Rec	335	EA	\$12.50	\$4,187.50
Tork 5007m Controller (Revocable)	5007m	35	EA	\$20.00	\$700.00
Equipment Subtotal					\$515,343.50
Licenses/Support					
Ruckus SZ100 and VSCG License Upgrade for 1 AP	L09-0001-SG00	300	EA	\$65	\$19,500.00
Ruckus Smartcell Insight Management Software License for 1 AP	909-SCIL-0000	300	EA	\$10	\$3,000.00
Partner WatchDog Support for vSCG License supporting 1 Ruckus AP - 1 year	S02-0001-1LSG	300	EA	\$20	\$6,000.00*
Partner WatchDog Support for SmartCell Insight, Single AP - 1 Year	802-SCIL-1L00	300	EA	\$3	\$900.00*
SmartWAVE Technical Support - Network Monitoring, Optimization and Reporting - 1 Year	SWSPPT	300	EA	\$225	\$67,500.00*
Licenses/Support Subtotal					\$96,900.00

REVISED EXHIBIT D (Continued)

Professional Services					
Wireless Network Planning, Design and Installation Services		1	LS	\$322,179.00	\$322,179.00
Circuit Tracing		300	EA	\$120.00	\$36,000.00
Provide "hand drawn" Circuit Drawing		150	EA	\$420.00	\$63,000.00
Structural Analysis		3	EA	\$6,000.00	\$18,000.00
Survey Poles to Collect Info for City Form		180	EA	\$95.00	\$17,100.00
Installation of Luco P7 and Receptacle		300	EA	\$240.00	\$72,000.00
Installation of Grounding on Metal Pole		300	EA	\$240.00	\$72,000.00
Installation of Grounding on Wood Pole on Dirt (Revocable)		15	EA	\$1,320.00	\$19,800.00
Installation of Grounding on Wood Pole on Concrete (Revocable)		5	EA	\$1,560.00	\$7,800.00
Installation of Fuses on 27 Wood Poles (Revocable)		27	EA	\$1,777.78	\$48,000.00
Installation of Tork 5007m Controller and Receptacle (Revocable)		35	EA	\$240.00	\$8,400.00
Installation Services to Bypass Contactor in Pedestal/Cabinet (Revocable)		4	EA	\$576.00	\$2,304.00
Create Electrical Plans and As-builts for Permit		1	LS	\$20,300.00	\$20,300.00
Convert Hand-drawn Circuit Drawings to E-copy		300	EA	\$145.00	\$43,500.00
Professional Services Subtotal					\$750,383.00
				Materials/Equipment	\$515,343.50
				Licenses/Support (5 years)	\$394,500.00
				Professional Services	\$750,383.00
				Tax (9.25%)	\$47,669.27
				GRAND TOTAL	1,707,895.77

*represents annual recurring costs

Pricing Assumptions and Notes:

1. Taxes are included.
2. Payment Terms are Net-30 upon install completion.
3. SmartWAVE will retain ownership of the equipment until payment is made in full.
4. Professional Services include site survey, design, and installation of items listed.
5. Price is based on quantity of radios listed.
6. Price assumes the Use of the City of San José vSCG and SCI Server Platform.
7. Price assumes RJ45 Handoff to Fiber Infrastructure at all Base Station Sites.
8. Price assumes space is available in cabinet at all Gateway AP locations to house POE Switch and Surge Protection.
9. Price assumes all Mesh Node locations can be powered via Photocell at Street Light locations.
10. Price assumes all assets listed in Preliminary design are available for radio installation.
11. Price subject to change upon completion of a site survey.
12. Price is inclusive of Bucket Truck and all travel expenses (if necessary).
13. Price assumes basic Traffic Control is required and provided by Contractor.
14. Price assumes placement of cones acceptable for street installation work and meeting the MUTCD (Manual on Uniform Traffic Control Devices).
15. All electrical work is based on services being provided by a licensed and approved subcontractor.

REVISED EXHIBIT D (Continued)

Additional Item Costs (as required and subject to City Approved Supplemental Work Order Form or Change Order)

	Description	Options	Price
1.	Perform a Voltage Drop and Load Analysis for connecting new equipment to be in compliance with National Electrical Code (NEC) for each circuit.		\$120/each
2.	Power Connections: Depending on the design of existing photocell controller (LUCO PD or LUCO P7), there are various options for tapping power to existing street lights.	Option #1: LUCO P7: Installing Adaptor	\$240/each
		Option #2: LUCO PD: replacing the luminaire including the photocell controller, or bypassing the photocell controller and connecting the power directly at the base of the pole, or by other means approved by the City.	\$1,000/each
3	Structural Analysis	Structural Analysis assumes 2 different types of analysis would need to be performed: 1) an analysis of 1 Ruckus AP installed on a pole, and 2) an analysis of 2 Ruckus APs installed on a pole. The services to be provided by Subcontractor: Mark Thomas and Company.	\$13,412/Project

Ongoing Support and Maintenance Costs**

SmartWAVE Technical Support - Network Monitoring, Optimization and Reporting	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Based on 300 pole implementation	\$0 (Year 1 included in installation cost)	\$74,400	\$74,400	\$74,400	\$74,400	\$297,600

**Ongoing support and maintenance will commence upon Final System Acceptance.

REVISED EXHIBIT B COMPENSATION/PAYMENT SCHEDULE

1. Payment Terms

- 1.1. The maximum amount payable for all products and services provided under this Agreement shall not exceed **Two Million Nine Hundred Sixty-One Thousand Fifty-One Dollars (\$2,961,051)** for two attendance areas, including payments for supplemental in-scope services and network maintenance for the Initial Term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2. Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following acceptance of designated milestones as shown below in Table B1-Payment Schedule. All payments are based upon City's acceptance of Contractor's performance as evidenced by successful completion of all of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the Milestone for which payment is due.
- 1.3. Payment for any part or parts of the System provided hereunder, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect the components of the System when delivered and reject upon notification to Contractor any or all of the System which does not conform to the Specifications or other requirements of this Agreement. Components of the System that are rejected shall be promptly corrected, repaired, or replaced by Contractor. If City receives components of the System with defects or nonconformities not reasonably apparent on inspection, then City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

2. Project Performance & Payment Schedule

- 2.1. Compensation shall be as set forth below in Table B1: Performance and Payment Schedule.
- 2.2. All invoicing shall include only deliverables accepted and approved by City.
- 2.3. All invoices will be held pending outstanding monthly performance reports.
- 2.4. Work shall commence immediately upon execution of the Agreement.
- 2.5. All timeline dates are understood to be close of business, 5:00 p.m. Pacific Time.
- 2.6. If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.

Table B1: Payment Schedule for Implementation

Milestone/Item	Original Compensation Estimate	Final Costs
Attendance Area 1: James Lick High School	(Estimate based on 300 Poles)	(200 Poles)
- Attendance Area Deployment	\$793,200	\$709,644
- Final System Acceptance The Signed Certificate triggers payment of 100% (10% holdback). The one year warranty commences upon Final System Acceptance.	\$123,800	\$105,704
- Supplemental Services	\$321,000	\$257,407
Attendance Area 1: Implementation Final Compensation	\$1,238,000	\$1,072,755
Annual Support and Maintenance		
- Second Year Support and Maintenance (11/1/18–10/31/19)	\$74,400	\$44,775
- Third Year Support and Maintenance (11/1/19–10/31/20)	\$74,400	\$44,775
- Fourth Year Support and Maintenance (11/1/20–10/31/21)	\$74,400	\$44,775
- Fifth Year Support and Maintenance (11/1/21–10/31/22)	\$74,400	\$44,775
Attendance Area 1: Total Compensation Not-To-Exceed	\$1,535,600	\$1,251,855
Milestone/Item	Estimated Compensation	
Attendance Area 2: William C. Overfelt High School	(Estimate based on 300 Poles)	
- Monthly Progress Payments: Contractor will invoice monthly based on progress of the project. The invoiced items will include all materials and services during the previous 30 days. Only 90% of the total for each month will be invoiced, and a 10% retainage amount will be withheld. For example, if Contractor provides \$100,000 of services during the month, Contractor will invoice for \$90,000 of services and note the retainage amount of \$10,000 on the invoice. At the end of the project, Contractor will invoice for the sum of all retainage amounts, which should equate to 10% of the total project expenditures.	\$1,270,436 (See Section 3 below for further payment details.)	
- Final System Acceptance The Signed Certificate triggers payment of 100% (10% holdback). The one year warranty commences upon Final System Acceptance.	\$141,160	
Attendance Area 2: Implementation Compensation Not-To-Exceed	\$1,411,596	
Annual Support and Maintenance (estimated dates)*		
- Second Year Support and Maintenance (9/1/19–8/31/20)*	\$74,400	
- Third Year Support and Maintenance (9/1/20–8/31/21)*	\$74,400	
- Fourth Year Support and Maintenance (9/1/21–8/31/22)* (Option Year 1)	\$74,400	
- Fifth Year Support and Maintenance (9/1/22–8/31/23)* (Option Year 2)	\$74,400	
Attendance Area 2: Total Compensation Not-To-Exceed	\$1,709,196	
TOTAL AGREEMENT NOT-TO-EXCEED		\$2,961,051

*Ongoing support and maintenance will commence upon Final System Acceptance.

3. Application for Progress Payment

- 3.1. Once each month, the Contractor shall submit an application for progress payment for the work done in the preceding month. The Contractor shall submit its monthly application for progress payment at a time acceptable to the City’s PM, and the Contractor shall include whatever documentation the City’s PM reasonably determines is necessary to authorize a progress payment.

- 3.2. Before the City makes any partial payment or the final payment, and as a condition of a Contractor’s application for progress or final payment being deemed complete, the City’s PM may require the Contractor to submit satisfactory evidence that the Contractor is not delinquent in payments to employees or creditors for labor and materials incorporated into the work.
- 3.3. The Contractor shall provide to the City’s PM, with each application for progress payment, the verified and certified payroll records for all of its employees and those employees of Contractor’s subcontractors, as required in Exhibits H and I, entitled "Wage Requirements," and "Labor Compliance Addendum." The verified and certified payroll records submitted with each application for progress payment shall be for the same period of time as the work for which the Contractor is seeking payment.
 - 3.3.1. The Contractor agrees that submission of the verified and certified payroll records with each application for progress payment is an express condition precedent to the City PM’s obligation to make a progress payment. The City PM is not obligated to approve or make, in whole or in part, any progress payment due the Contractor until the Contractor has submitted the required payroll records.
 - 3.3.2. Any payment of a progress payment, in whole or in part, by the City PM despite the Contractor’s failure to submit the required payroll records in a timely manner is not a waiver of any other term or condition contained in this Contract or a waiver of the right to withhold payment for any subsequent breach.

4. Supplemental Work Order Form (for additional “in-scope” services)

In the event the City requires supplemental services for additional in-scope work as described in Appendix A5 Price List (Item 3), Contractor shall provide a written quotation that includes all costs to complete the supplemental service requested and shall obtain approval before start of work using the Supplemental Work Order Form in Exhibit F. Upon receiving City's written approval to proceed with the supplemental service, Contractor shall perform the supplemental service at a time mutually agreed upon by Contractor and City according to quoted price.

5. Change Order Form (for additional “out-of-scope” services)

Supplemental Services are ad hoc services related to those set forth in this Agreement, but not specifically identified herein. Contractor shall provide Supplemental Services at the contract rates shown below, or City may ask Contractor for a written quote consistent with the contract rates for each work request/project in lieu of Time & Materials. Any supplemental services must be authorized in advance, in writing, by the Director of Finance pursuant to Section 7 Change Order Procedure and Authorization in the form of Exhibit E.

Job Title/Services	Rate
Senior PM	\$271/hour
Senior Structural Engineer	\$271/hour
Structural Engineer	\$180/hour
CAD Tech	\$132/hour
Survey Crew	\$204/hour
Clerical Admin	\$120/hour
Senior Network/RF Engineer	\$145/hour

Job Title/Services	Rate
Network/RF Technician	\$95/hour
Project Manager	\$130/hour
Incremental Indoor AP Support Services	\$240 <i>Per Access Point (AP), Per Year</i>
Incremental Outdoor AP Support Services	\$540 <i>Per Access Point (AP), Per Year</i>

Miscellaneous Time & Material	Cost/Discounts
Subcontractor Services	Cost +20%
Incidental Materials and Equipment	Cost +20%
Ruckus Hardware Items	30% Discount off List Price*
Ruckus Manufacturer Support	0% Discount off List Price
Handling Fee for Pass through Items	5% Discount off List Price

*an additional 5% off list pricing for bulk orders of Ruckus hardware and software over \$100,000. In the event, the City negotiates directly with Ruckus, Contractor shall provide intermediary services to process, handle and coordinate equipment orders at the negotiated cost +5%.

6. Renewal Period Compensation

- 6.1. Pursuant to Section 2.2 of the Agreement, the City reserves the right to extend the term of this Agreement for five (5) additional one-year terms (“Option Periods”).
- 6.2. After the initial five-year term, City may consider an annual adjustment of the Contractor’s compensation rates for technical support and maintenance which adjustment would be made on the first day of the Option Period. In no event, shall the renewal quote for ongoing services for the option periods increase by more than three percent (3%) per Option Period over the prior year’s fees. The Director of Finance is authorized to exercise options on behalf of the City.