

**SECOND 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 Second Amendment to the Funding Agreement between the East Side Union High School District (“DISTRICT”), a political subdivision of the State of California, and the City of San José (“CITY”), a municipal corporation of the State of California, is entered into on the date of execution by City (“Effective Date”). DISTRICT and CITY are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

**RECITALS**

**WHEREAS**, on October 28, 2016, CITY and DISTRICT entered into an agreement entitled “Funding Agreement Between the City of San José and East Side Union High School District Relating to Installation of a Community Wireless Network in the District (“FUNDING AGREEMENT”); and

**WHEREAS**, on October 5, 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 José and SmartWAVE Technologies LLC” (“SMARTWAVE AGREEMENT”); and

**WHEREAS**, CITY and DISTRICT share the common goal of providing greater access to the internet for student and resident within the boundaries of the DISTRICT in San José (“District Community Wireless Project” or “Project”); and

**WHEREAS**, the DISTRICT’s purpose in supporting the Project is to advance student academic achievement, provide opportunities for students to research career and university possibilities, and to foster student safety during out of school time by equipping and enhancing the DISTRICT’s school facilities technology resources in connection with the construction, reconstruction, rehabilitation, and replacement of the DISTRICT’s school facilities; and

**WHEREAS**, the CITY has incurred and will incur certain expenses pursuant to this FUNDING AGREEMENT relating to (i) the installation, monitoring and maintaining of equipment for the purpose of establishing wireless access points at various CITY facilities such as light poles, traffic signals, towers, community centers and other CITY-owned structures to modernize, integrate and enhance existing DISTRICT technological equipment and facilities and to support and enhance DISTRICT users’ (e.g., students and staff) access to the internet; (ii) management of the installation; and (iii) maintenance of the integrated wireless network; and

**WHEREAS**, the CITY and the DISTRICT have completed the installation of the Project within the James Lick High School attendance areas, and have evaluated the effectiveness of the network’s reliability and connectivity; and

**WHEREAS**, on October 28, 2019, CITY and DISTRICT executed the First Amendment to the FUNDING AGREEMENT to reflect actual costs for the James Lick attendance area and update estimated costs for the William C. Overfelt and Yerba Buena attendance areas; and

**WHEREAS**, CITY will complete installation of the Project for the Overfelt High School attendance area on or about June 12, 2020; and

**WHEREAS**, the DISTRICT agrees to continue to support this Project for the above-stated purposes by funding the cost of the installation of wireless access points and startup and maintenance of ongoing network services at mutually agreed upon CITY facilities including, but not limited to, light poles, traffic signals, towers, community centers and other CITY-owned structures, in connection with modernizing existing DISTRICT school facilities upon the terms and conditions stated in this FUNDING AGREEMENT; and

**WHEREAS**, CITY and DISTRICT now desire to further amend the FUNDING AGREEMENT to provide additional funds to implement the Project for the Yerba Buena High School attendance area; and

**NOW, THEREFORE**, the Parties agree to amend the FUNDING AGREEMENT as follows:

**SECTION 1.** Section 5 “Funding” is replaced in its entirety with the following:

**5. Funding**

- A. The District agrees to remit to the City an amount not to exceed **Four Million Ninety-Eight Thousand Four Hundred Forty-Two Dollars (\$4,098,442)** 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 **Second Revised Exhibit B** entitled “ESUHSD Community Wi-Fi City’s Resources Estimate.”
- C. The project buildout cost for each attendance area is estimated to be between \$1.4 million dollars to \$1.6 million dollars. **Second Revised Exhibit C** entitled “Project Costs and Allocations” details how the current funding of \$4,098,442 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 and District to appropriate funds for the purposes of this Agreement.
- E. The Parties agree that the Funding described in this 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 procurement bidding laws in connection with the contracting and performance of the work hereunder.

**SECTION 2.** REVISED EXHIBIT B, “ESUHSD Community Wi-Fi City’s Resources Estimate” is amended to read as shown in SECOND REVISED EXHIBIT B, which is attached hereto and incorporated herein.

**SECTION 3.** REVISED EXHIBIT C, “Project Costs and Allocations,” is amended to read as shown in SECOND REVISED EXHIBIT C, which is attached hereto and incorporated herein.

**SECTION 4.** REVISED EXHIBIT D, “Agreement for East Side Union High School District Community Wi-Fi Deployment Between the City of San José and SmartWAVE Technologies LLC,” is hereby amended as set forth in SECOND REVISED EXHIBIT D (Second Amendment to and SMARTWAVE AGREEMENT), which is attached hereto and incorporated herein.

**SECTION 5.** All terms and conditions of the original FUNDING AGREEMENT not modified by this First Amendment shall remain 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 of the State of California

**East Side Union High School District**  
a political subdivision of the State of California

\_\_\_\_\_  
LELAND WILCOX  
Chief of Staff  
Date: \_\_\_\_\_

\_\_\_\_\_  
CHRIS D. FUNK  
Superintendent  
Date: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
ROSA TSONGTAATARI  
Senior Deputy City Attorney

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

## SECOND REVISED EXHIBIT B ESUHSD COMMUNITY WI-FI CITY'S RESOURCES ESTIMATE

Following are revised estimates for City Resources required to implement and support three attendance areas (based on 200-pole installation) as of May 15, 2020:

ESUHSD Community Wifi Deployment - Estimated City's Support Cost - Program Level Estimate (+/)										
Resources	James Lick			Overfelt			Yerba Buena			
	FY18/19			FY19/20			FY20/21			
	Hrs	Hourly Rate	Cost	Hrs	Hourly Rate	Cost	Hrs	Hourly Rate	Cost	
<b>I - PROJECT FEASIBILITY PHASE</b>										
A. Scoping, Scheduling, Funding, and Agreement										
PW - R&B	60	148	\$8,880	0	152	\$0	0	0	\$0	
PW - ELECT	10	154	\$1,540	50	159	\$7,950	50	159	\$7,950	
PW - SECI	5	167	\$835	0	172	\$0	0	172	\$0	
PW - CMS	5	123	\$615	0	126	\$0	0	126	\$0	
PW - BUILDING	10	164	\$1,640	10	168	\$1,680	10	168	\$1,680	
DOT - SIGNAL/ST. LIGHT	5	86	\$430	5	88	\$440	5	88	\$440	
PBCE		154	\$0		159	\$0	0	159	\$0	
CMO										
IT										
<b>Subtotal</b>	<b>95</b>		<b>\$13,940</b>	<b>65</b>		<b>\$10,070</b>	<b>65</b>		<b>\$10,070</b>	
B. Project Development										
PW - R&B	60	148	\$8,880	0	152	\$0	0	0	\$0	
PW - ELECT	30	154	\$4,620	70	159	\$11,130	70	159	\$11,130	
PW - SECI	5	167	\$835	0	172	\$0	0	172	\$0	
PW - CMS	2	123	\$246	20	126	\$2,520	20	126	\$2,520	
PW - BUILDING	20	164	\$3,280	20	168	\$3,360	20	168	\$3,360	
DOT - SIGNAL/ST. LIGHT	20	86	\$1,720	10	88	\$880	10	88	\$880	
PBCE		154	\$0		159	\$0		159	\$0	
CMO				10			10			
IT				5			5			
<b>Subtotal</b>	<b>137</b>		<b>\$19,581</b>	<b>135</b>		<b>\$17,890</b>	<b>135</b>		<b>\$17,890</b>	
C. Environmental Review and Permit										
PW - R&B	20	148	\$2,960	0	152	\$0	0	0	\$0	
PW - ELECT		154	\$0	10	159	\$1,590	10	159	\$1,590	
PW - SECI	10	167	\$1,670	0	172	\$0	0	172	\$0	
PW - CMS		123	\$0		126	\$0		126	\$0	
PW - BUILDING		164	\$0		168	\$0		168	\$0	
DOT - SIGNAL/ST. LIGHT		86	\$0		88	\$0		88	\$0	
PBCE	20	154	\$3,080	20	159	\$3,180	20	159	\$3,180	
CMO										
IT										
<b>Subtotal</b>	<b>50</b>		<b>\$7,710</b>	<b>30</b>		<b>\$4,770</b>	<b>30</b>		<b>\$4,770</b>	

**ESUHSD Community Wifi Deployment - Estimated City's Support Cost - Program Level Estimate (+/- 3:**

Resources	James Lick			Overfelt			Yerba Buena		
	FY18/19			FY19/20			FY20/21		
	Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	Hourly	
	Hrs	Rate	Cost	Hrs	Rate	Cost	Hrs	Rate	Cost
<b>D. Fees, Permits, Other Expenses</b>									
PW - R&B	5	148	\$740	0	152	\$0	0	0	\$0
PW - ELECT		154	\$0	5	159	\$795	5	159	\$795
PW - SECI	10	167	\$1,670	0	172	\$0	0	172	\$0
PW - CMS		123	\$0		126	\$0		126	\$0
PW - BUILDING		164	\$0		168	\$0		168	\$0
DOT - SIGNAL /ST. LIGHT		86	\$0		88	\$0		88	\$0
PBCE	10	154	\$1,540	10	159	\$1,590	10	159	\$1,590
CMO									
IT									
<b>Subtotal</b>	<b>25</b>		<b>\$3,950</b>	<b>15</b>		<b>\$2,385</b>	<b>15</b>		<b>\$2,385</b>
<b>PhI total</b>	<b>307</b>		<b>\$45,181</b>	<b>245</b>		<b>\$35,115</b>	<b>245</b>		<b>\$35,115</b>
<b>II - PLANNING/DESIGN PHASE</b>									
<b>A. Design/Engineering Support Services</b>									
PW - R&B	100	148	\$14,800	0	152	\$0	0	0	\$0
PW - ELECT	200	154	\$30,800	200	159	\$31,800	200	159	\$31,800
PW - SECI	20	167	\$3,340	0	172	\$0	0	172	\$0
PW - CMS	20	123	\$2,460	20	126	\$2,520	20	126	\$2,520
PW - BUILDING	20	164	\$3,280	20	168	\$3,360	20	168	\$3,360
DOT - SIGNAL /ST. LIGHT	50	86	\$4,300	20	88	\$1,760	20	88	\$1,760
PBCE	5	154	\$770	5	159	\$795	5	159	\$795
CMO									
IT									
<b>Subtotal</b>	<b>415</b>		<b>\$59,750</b>	<b>265</b>		<b>\$40,235</b>	<b>265</b>		<b>\$40,235</b>
<b>B. Project Management</b>									
PW - R&B	300	148	\$44,400	0	152	\$0	0	0	\$0
PW - ELECT		154	\$0	200	159	\$31,800	200	159	\$31,800
PW - SECI		167	\$0		172	\$0		172	\$0
PW - CMS		123	\$0		126	\$0		126	\$0
PW - BUILDING		164	\$0		168	\$0		168	\$0
DOT - SIGNAL /ST. LIGHT		86	\$0		88	\$0		88	\$0
PBCE		154	\$0		159	\$0		159	\$0
CMO									
IT									
<b>Subtotal</b>	<b>300</b>		<b>\$44,400</b>	<b>200</b>		<b>\$31,800</b>	<b>200</b>		<b>\$31,800</b>

ESUHSD Community Wifi Deployment - Estimated City's Support Cost - Program Level Estimate (+/- 35%)										
Resources	James Lick FY18/19			Overfelt FY19/20			Yerba Buena FY20/21			
	Hrs	Hourly Rate	Cost	Hrs	Hourly Rate	Cost	Hrs	Hourly Rate	Cost	
C. Field Investigation										
PW - R&B	40	\$ 148	\$5,920	0	\$ 152	\$0	0	\$0	\$0	
PW - ELECT	150	\$ 154	\$23,100	190	\$ 159	\$30,210	190	\$159	\$30,210	
PW - SECI	10	\$ 167	\$1,670	0	\$ 172	\$0	0	\$172	\$0	
PW - CMS	20	\$ 123	\$2,460	0	\$ 126	\$0	0	\$126	\$0	
PW - BUILDING	50	\$ 164	\$8,200	20	\$ 168	\$3,360	20	\$168	\$3,360	
DOT - SIGNAL/ ST.LIGHT	100	\$ 86	\$8,600	20	\$ 88	\$1,760	20	\$88	\$1,760	
PBCE		\$ 154	\$0		\$ 159	\$0		\$159	\$0	
CMO										
IT										
<b>Subtotal</b>	<b>370</b>		<b>\$49,950</b>	<b>230</b>		<b>\$ 35,330</b>	<b>230</b>		<b>\$ 35,330</b>	
<b>PhII total</b>	<b>1085</b>		<b>\$154,100</b>	<b>695</b>		<b>\$107,365</b>	<b>695</b>		<b>\$107,365</b>	
III - INSTALLATION PHASE										
A. Construction Management										
PW - R&B	50	\$148	\$7,400	0	\$152	\$0	0	\$0	\$0	
PW - ELECT		\$154	\$0	50	\$159	\$7,950	80	\$159	\$12,720	
PW - SECI		\$167	\$0	0	\$172	\$0	0	\$172	\$0	
PW - CMS	100	\$123	\$12,300	0	\$126	\$0	0	\$126	\$0	
PW - BUILDING		\$164	\$0		\$168	\$0		\$168	\$0	
DOT - SIGNAL/ STRE ET LIGHT		\$86	\$0		\$88	\$0		\$88	\$0	
PBCE		\$154	\$0		\$159	\$0		\$159	\$0	
CMO										
IT										
<b>Subtotal</b>	<b>150</b>		<b>\$19,700</b>	<b>50</b>		<b>\$7,950</b>	<b>80</b>		<b>\$12,720</b>	
B. Construction Inspection										
PW - R&B		\$148	\$0		\$152	\$0	0	\$0	\$0	
PW - ELECT	50	\$154	\$7,700	50	\$159	\$7,950	80	\$159	\$12,720	
PW - SECI	30	\$167	\$5,010	250	\$172	\$43,000	260	\$172	\$44,720	
PW - CMS	200	\$123	\$24,600	160	\$126	\$20,160	160	\$126	\$20,160	
PW - BUILDING	20	\$164	\$3,280	20	\$168	\$3,360	20	\$168	\$3,360	
DOT - SIGNAL/ ST.LIGHT	50	\$86	\$4,300	20	\$88	\$1,760	20	\$88	\$1,760	
PBCE	5	\$154	\$770	5	\$159	\$795	5	\$159	\$795	
CMO										
IT										
<b>Subtotal</b>	<b>355</b>		<b>\$45,660</b>	<b>505</b>		<b>\$77,025</b>	<b>545</b>		<b>\$83,515</b>	
<b>PhIII total</b>	<b>505</b>		<b>\$65,360</b>	<b>555</b>		<b>\$84,975</b>	<b>625</b>		<b>\$96,235</b>	

ESUHSD Community Wifi Deployment - Estimated City's Support Cost - Program Level Estimate (+/- 35%)										
Resources	James Lick			Overfelt			Yerba Buena			
	FY18/19			FY19/20			FY20/21			
	Hrs	Hourly Rate	Cost	Hrs	Hourly Rate	Cost	Hrs	Hourly Rate	Cost	
IV - CLOSE-OUT PHASE										
PW - R&B	30	\$148	\$4,440	0	\$152	\$0	0	\$0	\$0	
PW - ELECT	10	\$154	\$1,540	40	\$159	\$6,360	40	\$159	\$6,360	
PW - SECI	5	\$167	\$835	0	\$172	\$0	0	\$172	\$0	
PW - CMS	20	\$123	\$2,460	0	\$126	\$0	0	\$126	\$0	
PW - BUILDING	5	\$164	\$820	0	\$168	\$0	0	\$165	\$0	
DOT - SIGNAL/ST.LIGHT	10	\$86	\$860	0	\$88	\$0	0	\$88	\$0	
PBCE		\$154	\$0		\$159	\$0		\$159	\$0	
CMO										
IT										
<b>Subtotal</b>	<b>80</b>		<b>\$10,955</b>	<b>40</b>		<b>\$6,360</b>	<b>40</b>		<b>\$6,360</b>	
<b>PhIV total</b>	<b>80</b>		<b>\$10,955</b>	<b>40</b>		<b>\$6,360</b>	<b>40</b>		<b>\$6,360</b>	
<b>TOTAL PER FY</b>	<b>1977</b>		<b>\$275,596</b>	<b>1535</b>		<b>\$233,815</b>	<b>1605</b>		<b>\$245,075</b>	

		James Lick			Overfelt			Yerba Buena			TOTAL COST PER GROUP
		FY18/19			FY19/20			FY20/21			
		Hrs	Hourly Rate	Cost	Hrs	Hourly Rate	Cost	Hrs	Hourly Rate	Cost	
Public Works - Road and Bridges	PW - R&B	482	\$152	\$71,336	0	\$148	\$0	0	\$157	\$0	\$71,336
Public Works - Electrical	PW - ELECT	436	\$159	\$67,144	925	\$154	\$147,075	925	\$168	\$147,075	\$361,294
Public Works - Structural Engineering and Code Inspection	PW - SECI	80	\$172	\$13,360	260	\$167	\$44,720	260	\$177	\$44,720	\$102,800
Public Works - Construction Management and Inspection	PW - CMS	329	\$126	\$40,467	200	\$123	\$25,200	200	\$130	\$25,200	\$90,867
Public Works - Building	PW - BUILDING	113	\$168	\$18,532	90	\$164	\$15,120	90	\$180	\$15,120	\$48,772
Transportation - ITS/ Signal/Street Light	DOT - SIGNAL/STREET LIGHT	219	\$88	\$18,809	75	\$86	\$6,600	75	\$91	\$6,600	\$32,009
Plan, Building and Code Enforcement	PBCE	27	\$159	\$4,158	40	\$154	\$6,360	40	\$168	\$6,360	\$16,878
City Manager Office	CMO			\$0			\$0			\$0	\$0
Information Technology	IT			\$0			\$0			\$0	\$0
<b>TOTAL PER FY</b>		<b>1686</b>		<b>\$233,806</b>	<b>1520</b>		<b>\$245,075</b>	<b>1590</b>		<b>\$245,075</b>	<b>\$723,956</b>

## SECOND REVISED EXHIBIT C PROJECT COSTS AND ALLOCATIONS

The following reflects actual final project costs for the James Lick Attendance Area and revised estimates for the William C. Overfelt (Overfelt) and Yerba Buena Attendance Areas:

<b>James Lick High School</b>	<b>Original Estimate (based on 300 Poles)</b>	<b>Final Actual Costs (based on 199 Poles)</b>	
		<b>District Funded</b>	<b>City Funded</b>
SmartWAVE Installation (including Supplemental Services and Year 1 Maintenance & Support)	\$952,332	\$1,072,756	\$0
City Staff Project Delivery	249,507	233,806	0
Maintenance & Support	150,000	0	193,428*
<b>TOTAL JAMES LICK</b>	<b>\$1,351,839</b>	<b>\$1,306,562</b>	<b>\$193,428</b>
<b>GRAND TOTAL JAMES LICK</b>		<b>\$1,499,990</b>	

\*For Years 2 - 5.

<b>Overfelt High School</b>	<b>Original Estimate (based on 300 Poles)</b>	<b>Revised Estimate (based on 200 Poles)</b>	
		<b>District Funded</b>	<b>Currently Unfunded</b>
SmartWAVE Installation:			
-Pre-Project Design and Planning Services	\$0	\$80,910	\$0
-Materials and Equipment	\$496,631	378,575	0
-Licenses & Year 1 Support & Maintenance	96,900	64,600	0
-Professional Services	230,345	341,906	0
-Sales Tax	43,456	35,018	0
-Ongoing Maintenance & Support**	75,000	99,200	99,200
-As-Required In-Scope Supplemental Services	95,000	41,755	0
<b>Subtotal SmartWAVE</b>	<b>\$1,037,332</b>	<b>\$1,041,964</b>	<b>\$99,200</b>
City Staff Project Delivery	309,731	245,075	0
Contingency***	0	106,399	0
<b>TOTAL OVERFELT</b>	<b>\$1,347,063</b>	<b>\$1,393,438</b>	<b>\$99,200</b>
<b>GRAND TOTAL OVERFELT</b>		<b>\$1,492,638</b>	

\*\*Year 1 Maintenance & Support included with Installation. District funding to cover Years 2 and 3. Years 4 and 5 remain unfunded.

\*\*\*For unanticipated products and services required to complete the project.



Yerba Buena High School	Original Estimate (based on 300 Poles)	Revised Estimate*** (based on 200 Poles) as of June 11, 2019	Revised Estimate (based on 200 Poles) as of June 2, 2020	
			District Funded	Currently Unfunded
SmartWAVE Installation:				
-Materials and Equipment	\$496,631	\$378,575	\$375,123	\$0
-Licenses & Year 1 Support & Maintenance	96,900	64,600	64,600	0
-Professional Services	230,345	422,816	474,420	0
-Sales Tax	43,456	35,018	34,699	0
-Ongoing Maintenance & Support	450,000	198,400	49,600	148,800
-As-Required Supplemental Services	120,000	41,755	50,000	0
<b>Subtotal SmartWAVE</b>	<b>\$1,437,332</b>	<b>\$1,141,164</b>	<b>\$1,048,442</b>	<b>\$148,800</b>
City Staff Project Delivery	258,450	245,075	245,075	0
Contingency	0	106,399	104,925	0
<b>TOTAL Yerba Buena</b>	<b>\$1,695,782</b>	<b>1,492,638</b>	<b>\$1,398,442</b>	<b>\$148,800</b>
<b>GRAND TOTAL YERBA BUENA</b>			<b>\$1,547,242</b>	

\*\*\*Based on Overfelt estimate.

Funding and Funding Gap	Original Estimate	Revised as of June 11, 2019	Revised as of June 2, 2020
Estimated Costs – Three Attendance Areas	\$4,394,684	\$4,485,266	\$4,539,870
District Funding	-2,700,000	-2,700,000	-4,098,442
City Funding (Years 2-5 Maintenance and Support for James Lick)	0	-193,428	-193,428
<b>ESTIMATED FUNDING GAP</b>	<b>\$1,694,684</b>	<b>\$1,591,838</b>	<b>\$248,000</b>

**SECOND REVISED EXHIBIT D**

**SECOND AMENDMENT TO AND THE AGREEMENT FOR EAST SIDE  
UNION HIGH SCHOOL DISTRICT COMMUNITY WI-FI DEPLOYMENT  
BETWEEN THE CITY OF SAN JOSE AND SMARTWAVE  
TECHNOLOGIES, LLC**