

**AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
UBICQUIA, INC.
FOR A SMART OUTDOOR LIGHTING MANAGEMENT SOLUTION**

This Agreement is entered into as the City’s execution date (“Effective Date”) between the City of San José, a municipal corporation (“City”), and Ubicquia, Inc., a Delaware corporation registered to conduct business in the State of California, (hereinafter “Contractor”). Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

WHEREAS, City issued a Request for Proposal ("RFP") to acquire a Smart Outdoor Light Management Solution (the “Solution”) including a Lighting Management Software (the “Software”), controller hardware (the “Hardware”), and professional services, including implementation, configuration, training, and ongoing maintenance and support (collectively the “Services”); and

WHEREAS, Contractor has an indepth understanding of City’s requirements through Contractor’s examination of the RFP documents and the exchange of information; and

WHEREAS, Contractor proposed a Solution, including Software, Hardware, and Services, in response to the RFP; and

WHEREAS, Contractor warrants that the proposed Solution will meet the City’s specifications and requirements as described in the Scope of Services; and

WHEREAS, Contractor’s proposal demonstrates Contractor’s knowledge and expertise with public organizations; and

WHEREAS, the recitals are true and correct and are incorporated into this Agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1 AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of this Agreement including:

- EXHIBIT A-1 - Scope of Services
- A-2 - Functionality and Features Matrix
- A-3 - Preliminary Project Implementation Schedule
- A-4 - Final Acceptance Certificate
- EXHIBIT B - Compensation
- EXHIBIT C - Insurance Requirements
- EXHIBIT D - Change Order Form
- EXHIBIT E - Notice of Option to Extend Agreement

- EXHIBIT F-1 - Contractor's Software License Agreement
- F-2 - Contractor's Cloud Services Agreement
- EXHIBIT G -1 - Information Technology and Security Requirements
- G-2 - Privacy and Disclosure Policy

In the event any discrepancies or inconsistencies between the provisions of this Agreement and any of the above-referenced documents arise, the provisions of this Agreement will prevail except that the terms of the Contractor's Software License Agreement (Exhibit F-1) and Contractor's Cloud Services Agreement. (Exhibit F-2) shall control with respect to the terms of use of the Software license and cloud services. The provisions in the Exhibits shall prevail over conflicting terms in any Attachments to the Exhibits. Contractor and City hereby acknowledge that they have drafted and negotiated the Agreement jointly and that the Agreement will be construed neither against nor in favor of either, but rather in accordance with its fair meaning.

This Agreement and the Exhibits set forth above, contain all of the agreements, representations, and understandings of the Parties hereto, and supersede and replace any previous understandings, commitments, or agreements, whether oral or written. Any other terms or conditions included in any shrink-wrap or boot-screen license agreements, quotes, invoices, acknowledgments, bills of lading, or other forms utilized or exchanged by the Parties shall not be incorporated in this Agreement or be binding upon the Parties unless the Parties expressly agree in writing or unless otherwise provided for in this Agreement.

2 **TERM OF AGREEMENT**

2.1 Term

The term of this Agreement is from Effective Date to December 31, 2022 ("Initial Term"), inclusive, subject to the provisions of Section 14 TERMINATION and subsection 2.2 "Options to Extend."

2.2 Options to Extend

After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for nine (9) additional one-year terms ("Option Periods") through December 31, 2031 for ongoing subscription, maintenance and support. City shall provide Contractor written notice in the form of Exhibit E of its intention to exercise its option prior to the end of the then current term.

2.3 No Waiver

City's agreement to extend the term of this Agreement is not a waiver of the "time is of the essence" provision in Section 5.

Notwithstanding this Section, the Parties agree that the preliminary project schedule set forth in Exhibit A-3 and the ability of the Parties to provide and/or use the products and/or services under this Agreement may be limited if business activities are subject to local, state, or federal mandates and advisories for managing public health and safety related to the COVID-19 pandemic or any other force majeure event which are outside of a Party's reasonable control. The Parties agree that the provision of products and services and the payment for such products and services may be postponed or suspended following execution of this

Agreement by the City, and that the Parties are not required to act on this Agreement until the City issues a written notice to proceed and the Party affected by the force majeure event can reasonably proceed with its obligations under this Agreement.

3 **SCOPE OF SERVICES**

3.1 Scope of Work

Contractor shall implement the Solution and perform the Services as set forth in the Scope of Services (the “Scope of Services” or “Scope”) which is attached hereto as Exhibits A-1 through A-4 and incorporated as though fully set forth herein.

3.2 Notification

Contractor agrees to notify City promptly of any factor, occurrence, or event coming to its attention that may affect Contractor’s ability to meet the requirements of the Agreement or that is likely to occasion any material delay in completion of the projects contemplated by this Agreement. Such notice shall be given in the event of any loss or reassignment of key employees, threat of strike, or major equipment failure.

3.3 Contractor’s Software

The terms for the licensing of the Software, including subsequent releases licensed to the City, shall be as set forth in the Software License Agreement (Exhibits F-1 and F-2).

3.4 Information Technology and Security Requirements

Contractor agrees to perform the work set forth in this Agreement in accordance with the City’s Information Technology and Security Requirements, which are attached hereto as Exhibit G-1 and incorporated herein.

3.4.1 Privacy and Disclosure Policy

Contractor agrees in the performance of the Services provided herein to comply with the City’s Privacy and Disclosure Policy (the “Policy”) as set forth in Exhibit G-2, which is attached hereto and incorporated herein. Contractor shall ensure that all webpages that it creates are consistent with this Policy. Contractor further agrees that it shall treat all information received through this Agreement in strict accordance with the Policy.

4 **WAGE THEFT**

4.1 **Definition:** For purposes of this provision, “Wage Theft” means a final judgement, order, or other determination of a federal or state court, or of a federal, state, or local administrative agency that a contractor or subcontractor failed to pay its workers in accordance with any applicable federal, state, or local wage and hour laws, regulations, or other requirements. A judgement, order, or other determination is “final” if the contractor or subcontractor has exhausted all appeals, and the time period to appeal has expired.

4.2 **Compliance with Wage and Hour Laws:** The Contractor must comply with all applicable federal, state, and local wage and hour laws, regulations, and policies, as required by City Council Policy 0-44

<https://www.sanjoseca.gov/home/showdocument?id=12945>. The Contractor must include this requirement in each of its subcontracts.

4.3 **Representations in Wage Theft Disclosure Certification Forms:** The City awarded this Agreement to the Contractor, in part, based on the representations made by the Contractor and its listed subcontractors in the Proposal Certification or Wage Theft Disclosure Certification Form that they completed as part of the of procurement process.

4.3.1 **Contractor Warranty:** By executing this Agreement, the Contractor affirms the accuracy of the representation it made in its Proposal Certification or Wage Theft Disclosure Certification Form. It is a material breach of this Agreement if the City determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.

4.3.2 **Listed Subcontractors:** The Contractor must include in the subcontract of all subcontractors that it listed during the procurement, a provision that does the following:

4.3.2.1 Requires the subcontractor to warrant the accuracy of the Proposal Certification or Wage Theft Disclosure Certification Form that it submitted during the procurement of this Agreement, and

4.3.2.2 Allows the Contractor to terminate the subcontract if the City or the Contractor determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.

4.3.3 **Termination of Subcontractor:** The Contractor must terminate a listed subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Proposal Certification or Wage Theft Disclosure Certification form.

4.4 **Subcontractors Not Listed:** Before contracting with a subcontractor not listed during the procurement process, the Contractor will require the subcontractor to complete a Wage Theft Disclosure Certification Form provided by the City's Office of Equality Assurance through their website at

<https://www.sanjoseca.gov/home/showdocument?id=64354>. The Contractor must provide the completed certification form to the City within ten (10) calendar days of executing the subcontract.

4.4.1 The Contractor cannot use any subcontractor that has one or more Wage Theft violations, or has one (1) outstanding, unpaid Wage Theft violation, within five (5) years before the date it certified the Wage Theft Disclosure Certification Form.

4.4.2 The Contractor must include a provision in each subcontract allowing the Contractor to terminate the subcontract based on the subcontractor's submission of a materially inaccurate Wage Theft Disclosure Certification Form. The Contractor must terminate a subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Wage Theft Disclosure Certification Form.

- 4.5 **Occurrence or Discovery of Wage Theft:** The Contractor must notify, in writing, the City's Office of Equality Assurance no more than fifteen (15) calendar days after either of the following events: (1) any Wage Theft that occurs during the term of the Agreement involving the Contractor or a subcontractor, and (2) the Contractor becomes aware of Wage Theft by the Contractor or a subcontractor that should have been previously disclosed but was not.
- 4.5.1 **Satisfaction by Contractor:** The Contractor must promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it. The Contractor must provide the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order, or other determination within five (5) calendar days of doing so.
- 4.5.2 **Satisfaction by Subcontractor:** The Contractor must include appropriate provisions in each subcontract requiring the subcontractor to do the following: (a) promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it and (b) provide the Contractor and the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order or other determination within five (5) calendar days of doing so.
- 4.5.3 **City's Right to Withhold Payment:** The City has the right to withhold any moneys owing the Contractor in the amount of the Wage Theft against the Contractor or a subcontractor.
- 4.6 **Material Breach:** Failure to comply with any part of this Section 4 constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- 4.7 **Notice:** Notice provided to the Office of Equality Assurance as required under this Section 4 shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

5 **PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE**

Contractor shall perform the Services according to the terms and provisions of the preliminary schedule set out in the attached Exhibit A - 3, entitled "Preliminary Project Implementation Schedule." Time is expressly made of the essence with respect to each and every term and provision of this Agreement.

6 **DATA AND FACILITIES**

Contractor acknowledges that it has in its possession all applicable specifications and drawings and all other documents to which reference is made herein and/or which are matched hereto, and all such data are adequate to enable Contractor to fairly determine its ability to perform the work called for herein at the price and in accordance with the schedule set forth herein. Contractor

represents that it now has or can readily procure, without assistance of City, all facilities, machinery, and equipment necessary for the performance of this Agreement.

7 STANDARDS OF SERVICE

In connection with the performance of any Services pursuant to this Agreement:

7.1 Number of Employees

Contractor warrants it will provide sufficient employees to complete the Services ordered within the applicable time frames established pursuant to this Agreement. Furthermore, Contractor shall, at its expense, supply all tools, equipment, and other materials necessary to perform the Services contemplated in this Agreement.

7.2 Skill of Employees

Contractor warrants that employees shall have sufficient skill, knowledge, and training to perform the Services and that the Services shall be performed in a professional and workmanlike manner.

7.3 Duty of Confidentiality

All data, documents, discussions, or other information developed or received by or for one Party in performance of this Agreement are confidential and must not be disclosed to any person except as authorized by the other Party or as required by law. The receiving Party warrants that all employees utilized by it in performing the Services are under a written obligation to the receiving Party requiring the employee to maintain the confidentiality of information of the other Party to the extent permitted by law.

7.4 Security and Safety

Contractor shall require employees providing Services at a City location to comply with applicable City security and safety regulations and policies. City may require each employee providing Services to undergo a background investigation, including, but not limited to, a criminal records and fingerprint check. Contractor shall promptly replace any employee found to be unacceptable to City, in its sole discretion, on the basis of a significant infraction found in the background investigation.

7.5 Contractor's Obligations to Employees

Contractor shall provide for and pay the compensation of its employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of employees. City shall not be liable to Contractor or to any employee for Contractor's failure to perform its compensation, benefit, or tax obligations. Contractor shall indemnify, defend, and hold City harmless from and against all such taxes, contributions, and benefits and will comply with all associated governmental regulations, including the filing of all necessary reports and returns.

7.6 Contractor-Initiated Staffing Changes

The qualifications of the Contractor's staffing for this Agreement are material considerations to the City's selection and decision to enter into this Agreement. For this reason, the City Project Manager's approval, which approval may not be unreasonably conditioned, delayed

or withheld, is required for the Contractor to remove, replace, or add to any of Contractor's staffing identified in Exhibit A-1.

7.7 City-Initiated Staffing Changes

The City reserves the right to request replacement of an employee or a proposed employee for reasonable cause, including, but not limited to, willful misconduct, inadequate performance or lack of skill, knowledge, or training. Contractor's replacement staff must be qualified to perform the Scope of Services and available to the City within five (5) working days of receipt of such request from City. If, within the first thirty (30) days after an employee's commencement of Services, City notifies Contractor (1) such employee's level of performance is unacceptable, (2) such employee has failed to perform as required, or (3) such employee, in City's sole opinion, lacks the skill, knowledge or training to perform at the required level, then Contractor will be required to review the work performed by said employee, confirm the quality of work, and correct any items the Contractor deems incorrect. If the City requests replacement of an employee and the Contractor has not replaced the employee within the thirty (30) day time period, City shall not be required to pay for, and shall be entitled to a refund of, any sums paid to Contractor for such employee's Services after the date of City's requested replacement of such employee.

8 **CHANGE ORDER PROCEDURE AND AUTHORIZATION**

8.1 Changes

Any changes to this Agreement after the Effective Date that relate to (i) deleting products or Services, (ii) adding products or Services, (iii) changing or modifying products or Services, or (iv) making other changes that materially alter the Scope of this Agreement or the deliverables required under this Agreement, including approval of all performance and/or payment schedules, shall be made by the Director of Finance in accordance with the procedures set forth below.

8.2 Contract Change Requests

Either Party hereto may, from time to time, and at any time during the term hereof, request a change, as defined in Section 8.1. Requests for changes shall be in writing and shall be addressed and delivered to the other Party as provided herein. Such writing shall be identified as a "Contract Change Request," shall carry a sequential number for ease of tracking, shall set forth in detail the nature of the change requested and the costs associated therewith, and shall identify the products, Services, deliverables, or schedules to be changed.

8.3 Procedures

As soon as practical after receipt by the notified Party of copies of the request, the Parties shall meet as necessary to discuss the change and to ascertain its cost and schedule impacts, if any.

8.4 Change Orders

If the Parties decide to implement a change request, a standard form Change Order ("CO") shall be prepared under the direction of the Director of Finance (or designee) in a form substantially similar to the form attached hereto as Exhibit D, which CO shall describe the change, delineate the cost, schedule, and other impacts of the change, and include the

payment terms for any price increase. Only the City's Director of Finance and Contractor's Authorized Representative shall have authority to execute COs to this Agreement. Execution of a CO by City's Director of Finance and Contractor's Authorized Representative shall constitute a modification hereof and shall be binding on both Parties hereto.

9 **COMPENSATION**

9.1 Contract Maximum

The total contract price in U.S. dollars shall not exceed Six Hundred Fifty-Four Thousand Four Hundred Dollars (\$654,400) during the Initial Term ("Maximum Compensation"). The terms, rates, and schedule of payment are set forth in the attached Exhibit B, entitled "Compensation." Contractor shall submit to City invoices at the completion of each milestone, but no more frequently than monthly, with a breakdown of Services as provided in 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.

9.2 Non-Funding

Each payment obligation of City is conditioned upon the availability of state or local government funds which are apportioned or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the function performed by Contractor, the product or service directly or indirectly involved in the performance of that function may be terminated by City at the end of the period for which funds are available. City shall notify Contractor in writing at the earliest possible time of any products or services which will or may be affected by a shortage of funds.

No penalty shall accrue for City in the event this provision is exercised, and City shall not be liable for any future payments due or for any damages as a result of termination under this Section 9.2. This provision shall not be construed so as to permit City to terminate this Agreement or any products or services in order to acquire similar equipment or service from another party. Contractor agrees to render any assistance which City may seek in affecting a transfer of any right of City in this Agreement, or any part hereof, that is required of City pursuant to the securing of financing hereunder. Despite the foregoing, the City shall pay Contractor for any Services performed or product delivered in accordance with this Agreement up to the date of termination.

10 **TAXES AND CHARGES**

Contractor shall be responsible for payment of all taxes, fees, contributions, or charges applicable to the conduct of Contractor's business.

11 **FINAL ACCEPTANCE**

Upon each delivery of the Hardware, Software, and Services (the components of the Solution), City and Contractor shall conduct acceptance tests. The criteria for the acceptance tests shall be mutually agreed upon by the Parties and in accordance with the Scope of Services (Exhibits A - 1 through A - 3). Final Acceptance will occur upon successful completion of the acceptance tests for each component (Hardware, Software, and Services) of the Solution. When Final

Acceptance occurs, the Parties will memorialize this event by promptly executing a Final Acceptance Certificate (Exhibit A - 4).

If, in the discretion of City, a specific component of the Solution does not meet the requirements of the acceptance test specifications, City may (1) permit Contractor to repair or replace the component so that the same meets the acceptance test specifications in all material respects, all at no additional expense to City or (2) return the component to Contractor, at Contractor's expense and without liability to City, and any amounts paid by City for the component shall be promptly refunded by Contractor to City. All warranties shall become effective and begin to run upon the successful completion of the acceptance tests and the date of Final Acceptance.

Payment for any part or parts of the Solution or Services 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 Solution when delivered and reject upon written notification to Contractor any and all of the Solution which does not conform to the specifications or other requirements of this Agreement. For the Hardware, City shall inspect and notify Contractor in writing within ten (10) business days from delivery of each shipment if any Hardware is found to not conform to the specifications or other requirements of this Agreement. Components of the Solution which are rejected shall be promptly corrected, repaired, or replaced by Contractor in accordance with Contractor's warranty obligations under this Agreement, such that the Solution conforms to the warranties, specifications, and other requirements of this Agreement. If City receives components of the Solution 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 under this Agreement following the discovery of such defect or nonconformity.

12 CONTRACTOR REPRESENTATIONS AND WARRANTIES

12.1 Contractor Responsibility

Contractor understands and accepts full responsibility for all requirements and deliverables defined in this Agreement. Contractor warrants it:

- 12.1.1 Has read and agrees with the specifications contained in the Scope of Services (Exhibits A – 1 through A - 4);
- 12.1.2 Fully understands the facilities, difficulties, and restrictions attending performance of the Services; and
- 12.1.3 Agrees to inform the City of any unforeseen conditions which will materially affect performance of the work within 45 days of the execution of this Agreement, or within five (5) business days from discovery or knowledge of such unforeseen condition and shall not proceed until written instructions are received from City.

12.2 Authority to Make Agreement

Contractor represents and warrants that Contractor has full right and authority to perform its obligations under this Agreement. City shall be entitled to use the Solution without disturbance.

12.3 Contractor Agreements with City Employees

Contractor agrees to not enter into a relationship that may result in a financial conflict of interest with any employee or agent of the City who participated in the making of governmental decisions related to this Agreement.

12.4 Warranty for Services and Software Customizations

Contractor warrants to City that Contractor shall render all Services and software customizations provided under this Agreement with reasonable care and skill. Contractor further warrants that the software customizations will function per the approved business requirements and design under ordinary use and operation in conformance with the specifications and documentation. Additionally, Contractor shall warrant its Services and software customizations for a period of one (1) year after Final Acceptance (“Warranty Period”). During the Warranty Period, City will notify Contractor in writing if any Services or software customizations do not conform to City’s specifications as contained in the Scope of Services (Exhibits A – 1 through A - 3). Upon receipt of such written notice, Contractor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Contractor shall (at no additional cost to the City) repair the defective Services or software customizations. The Warranty Period is reset for any repaired, replaced, or reperformed item(s), beginning upon City acceptance of the repaired, replaced, reperformed item(s). If despite its reasonable efforts, Contractor is unable to provide the City with Services or software customizations in compliance with the foregoing warranty, City may pursue its remedy at law to recover direct damages resulting from the breach of this warranty.

12.5 New Media

Media upon which any software customizations are delivered to City by Contractor:

- 12.5.1 Shall be new and free from defects in manufacture and materials;
- 12.5.2 Shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties;
- 12.5.3 Shall, during the Warranty Period, function properly under ordinary use and operate in conformance with the specifications; and
- 12.5.4 In the event that media on which any software application, customer software, or third party application software delivered is defective and cannot be read or utilized for its intended purpose by Contractor supplied or approved equipment, Contractor shall replace the defective media as soon as reasonably possible. Any delays occasioned by the failure of new media shall not be considered excusable delay.

13 WARRANTY AGAINST INFRINGEMENT

Contractor agrees to defend and indemnify City of all direct losses, costs, and damages resulting from a determination that the Services, Software, or software customizations supplied to City infringe any third party patent rights, copyrights, or trademarks provided that City (1) promptly notifies Contractor in writing upon City becoming aware of the existence of any such suit, action, proceeding threat; (2) allows Contractor sole control of the defense and/or settlement thereof; and (3) provides such reasonable cooperation as Contractor may require. In no event

shall City consent to any judgment or decree or do any other act in compromise of any such claim without Contractor's express prior written consent. In no event will Contractor be liable for the payment of any amount agreed to in settlement without Contractor's express consent. In the event that City is enjoined from use of the Services, Software, or software customizations due to a proceeding based upon infringement of patent, copyright or trademark, Contractor shall, at its option, either:

13.1 Modify the infringing item(s) at Contractor's expense, so it becomes non-infringing; or

13.2 Replace the infringing item(s) with equal non-infringing item(s), at Contractor's expense; or

13.3 Procure, at Contractor's expense, the necessary licenses for the City to continue using the item(s); or

13.4 Remove the item(s) and refund the purchase price less a reasonable amount for depreciation.

14 **TERMINATION**

14.1 Termination for Convenience

City shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days' written notice of termination.

14.2 Termination for Default

If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.

14.3 Termination Authority

The Director of Finance ("Director") is empowered to terminate this Agreement on behalf of City.

14.4 Consequences of Termination

In the event of termination, Contractor shall deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement, and upon receipt thereof, City shall pay Contractor for Services performed, Hardware accepted, and reimbursable expenses incurred up to the date of termination. In addition, City shall receive a pro-rata refund from Contractor for any prepaid expenses.

15 **INDEMNIFICATION**

Contractor shall defend, indemnify, and hold harmless City, its officers, employees, and agents against any third party claim, loss, damages, expenses, or liability that - directly or indirectly or in whole or in part - arise out of, pertain to, or result in any way from work performed under this Agreement due to the willful, reckless, or negligent acts (active or passive) or omissions by Contractor's officers, employees, agents, or subcontractors. The acceptance of said services and duties by City shall not operate as a waiver of such right of indemnification. City will promptly notify Contractor in writing of any claim, and Contractor shall have full control of the defense and settlement, of such claim. This provision shall survive the termination of this Agreement.

16 **INSURANCE REQUIREMENTS**

Contractor agrees to have and maintain the policies set forth in Exhibit C, entitled "Insurance Requirements," which is attached hereto and incorporated herein. All certificates and/or endorsements shall be subject to approval by the Risk Manager of the City of San José as to form and content. These requirements are subject to amendment or waiver if approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said certificates and/or endorsements before work commences under this Agreement.

17 **WAIVER**

Contractor agrees that City's waiver of any breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of Contractor's services will not be a waiver of any provision of this Agreement.

18 **INDEPENDENT CONTRACTOR**

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of Contractor's employees, any subcontracting subcontractors, and Contractor's operations. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

19 **COMPLIANCE WITH LAWS**

Contractor shall comply with all applicable laws, ordinances, codes, and regulations (collectively, "laws") of the federal, state, and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

20 **CONFLICT OF INTEREST**

Contractor shall avoid all conflict of interest or the appearance of conflict of interest in performance of this Agreement.

21 **NONDISCRIMINATION**

Contractor agrees that there shall be no discrimination against, or segregation of, any person, on account of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, marital status, or family status, in connection with or related to the performance of this Agreement.

22 **GIFTS**

22.1 Prohibition on Gifts

Contractor acknowledges that Chapter 12.08 of the San José Municipal Code prohibits City's officers and designated employees from accepting gifts as defined in Chapter 12.08.

22.2 No Offer

Contractor agrees not to offer any City officer or designated employee any gift prohibited by Chapter 12.08.

22.3 Breach of Agreement

Contractor's offer or giving of any gift prohibited by Chapter 12.08 will constitute a material breach of this Agreement. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in Section 14 TERMINATION of this Agreement.

23 **DISQUALIFICATION OF FORMER EMPLOYEES**

Contractor is familiar with Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance") relating to the disqualification of City's former officers and employees in matters which are connected with their former duties or official responsibilities. Contractor shall not utilize either directly or indirectly any officer, employee, or agent of Contractor to perform services under this Agreement, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

24 **CONFIDENTIAL AND PROPRIETARY INFORMATION**

24.1 Confidentiality

All data and information generated, collected, developed, discovered or otherwise saved in the Solution exclusively for the City (collectively the "Data") by the Contractor in the performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City, or as required by law.

24.2 Ownership of Materials

City and Contractor agree that Contractor shall own the entire right, title, and interest, including patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, Software, information and data solely conceived or developed by Contractor in the performance of the project, and developed using Contractor's facilities or personnel. City and Contractor agree that City shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, Software, information and data solely conceived or developed by City's facilities or personnel. Technology that is jointly developed using both City and Contractor personnel and facilities shall be jointly owned.

24.3 Ownership of Data

The City shall maintain ownership and control of the Data throughout the Agreement period and in perpetuity. Contractor shall have the right to use the Data solely to perform Services under the Agreement with the City. Contractor may not use the Data, a subset of the Data, and/or a summary of the Data, or, cause or permit the Data, a subset and/or a summary thereof, to be used by any third party, outside the scope of the Agreement without the express written consent of the City. To the extent applicable, Contractor shall provide City with a copy of the Data in a mutually agreed upon format at regular intervals and at such additional

times as the City deems appropriate. Contractor warrants that throughout all operational and maintenance activities the accuracy of the Data will be preserved.

24.4 Security

Contractor shall maintain reasonable effective controls and security to protect the Data, including conducting daily and incremental backups to a redundant data storage location, providing redundant power, internet, site redundancy, and emergency recovery procedures.

24.5 Copies of Data/Exit Strategy

Upon request of the City or in the event this Agreement is terminated, Contractor shall work with the City to ensure a smooth transition of all Data to the City's new environment. Additionally, upon request by the City and at no additional cost, Contractor shall provide City with a database export of the Data in a reasonable format acceptable to the City. At the termination of this Agreement, all Data at the Contractor's (or Contractor's subcontractor's) facilities shall be purged when the City confirms that it has received a satisfactory copy of the Data. Contractor shall provide written verification to the City once all City Data has been purged.

24.6 Enforcement

The City and Contractor agree that damages are not adequate and no adequate remedy at law exists for any threatened or actual disclosure or use of information by Contractor in violation of the provisions of this Agreement. Accordingly, Contractor consents to the entry of an injunction against threatened or actual disclosure or use of the information in violation of any provision of this Agreement.

25 **CONTRACTOR'S BOOKS AND RECORDS**

25.1 Maintenance during Term

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other documents evidencing or relating to charges for Services, or expenditures and disbursements charged to City for a minimum period of four (4) years, or for any longer period required by law, from the date of final payment to Contractor pursuant to this Agreement.

25.2 Maintenance after Term

Contractor shall maintain all documents which demonstrate performance under this Agreement for a minimum period of four (4) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

25.3 Inspection

Any documents required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Contractor shall provide copies of such documents to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

25.4 Custody of Records

Where City has reason to believe that any of Contractor's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, and subject to applicable laws and existing confidentiality obligations, require that custody of copies of the Contractor's documents be given to City and that these documents be maintained in City Hall. City agrees to grant access to Contractor's documents to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

26 **ASSIGNABILITY**

The Parties agree that the expertise and experience of Contractor are material considerations for this Agreement. Unless specifically authorized by this Agreement, Contractor may not assign the performance of any obligation or interest under this Agreement without the prior written consent of City, which consent may not be unreasonably conditioned, delayed or withheld. Any attempt by Contractor to assign this Agreement, in violation of this Section 26, will be voidable at City's sole option.

27 **SUBCONTRACTORS**

27.1 Authorized Subcontractors

Notwithstanding Section 26 ASSIGNABILITY, Contractor may use designated subcontractors approved in advance by City in performing Contractor's Services. Contractor must obtain City's prior written consent in order to change or add subcontractors. Contractor shall be responsible for directing the work of the approved subcontractors and for any compensation due to subcontractors. City assumes no responsibility whatsoever concerning such compensation.

27.2 Compliance with Agreement

Contractor shall ensure that Contractor's subcontractors comply with this Agreement. At City's request, Contractor shall require any or all of Contractor's subcontractors to sign an agreement with Contractor requiring compliance with this Agreement.

28 **GOVERNING LAW**

This Agreement must be construed -- and its performance enforced--under California law.

29 **JURISDICTION AND VENUE**

In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

Contractor further agrees that in the event a lawsuit involving this Agreement is filed by City, Contractor will unconditionally accept the jurisdiction of a federal or state court located in Santa Clara County, California.

30 **NOTICES**

30.1 **Manner of Giving Notice**: All notices and other communications required by this Agreement must be in writing and must be made via e-mail, personal service, trackable delivery service, or United States mail, postage prepaid.

30.2 **When Effective**: A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally served is effective when personally delivered. A notice or other communication that is delivered by a trackable delivery service is effective when signed for. A notice or other communication that is mailed is effective three (3) business days after deposit in the United States mail.

30.3 **To Whom Given**: All notices and other communications between the Parties required or permitted to be given under this Agreement must be given to the individuals identified below:

To the City: City of San José
 Attention: Director of Finance
 200 East Santa Clara St., 13th Floor
 San José, CA 95113
 purchasing@sanjoseca.gov

To the Contractor: Ubicquia, Inc.
 Attention: Legal Department
 401 E Las Olas Blvd., Suite 1750
 Fort Lauderdale, FL 33301
 legal@ubicquia.com

30.4 **Changing Contact Information**: Either Party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other Party pursuant to Section 30.

31 **OTHER PUBLIC AGENCY PURCHASES**

This Agreement resulted from a competitive bid through RFP PUR-RFP2021.02.10004 for Smart Outdoor Lighting Management Solution issued on March 12, 2021 pursuant to Chapter 4.12 of the San José Municipal Code. Other local and state government agencies may enter into agreement(s) based on the same material terms and conditions, and pricing. The local or state government agency shall accept sole responsibility for placing orders, arranging deliveries and/or services, and making payments to the Contractor. The City of San José will not be liable or responsible for any obligations, including but not limited to, financial responsibility in connection with these agreement(s) between the Contractor and other local and state government agency(ies).

32 **MISCELLANEOUS**

32.1 Survival of Provisions

If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.

32.2 Assignment

Subject to the provisions of Section 26 ASSIGNABILITY, this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

32.3 Headings

The headings of the Sections and Exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.


32.4 Counterparts

This Agreement may be executed in any number of counterparts and by each Party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

32.5 Use of Electronic Signatures

Unless otherwise prohibited by law or City policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the City.


City of San José
a municipal corporation

By 

Jennifer Cheng
Deputy Director, Finance

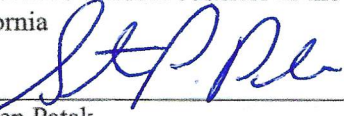
Date: Apr 13, 2022

APPROVED AS TO FORM:

By 


Diana Yuan
Deputy City Attorney

Ubicquia, Inc.
a Delaware Corporation
registered to conduct business in the State of
California

By 

Stephen Patak
Chief Revenue Officer

Date: 4/12/22

By 

Ian Aaron
Chief Executive Officer

Date: 4.12.22

EXHIBIT A-1 SCOPE OF SERVICES

The following Scope of Services defines the principal activities and responsibilities of Contractor and the City for the Smart Outdoor Light Management Solution.

To the extent not inconsistent with the Agreement between the City and Contractor, City’s RFP PUR-RFP2021.02.10004 (including all addenda and updates) issued on March 12, 2021, Contractor’s proposal response dated April 19, 2021, and Contractor’s Best and Final Offer (BAFO) response dated July 27, 2021 are incorporated herein by reference to provide context and supplemental information.

1 **OVERVIEW**

- 1.1 Through this Agreement the City is procuring a Smart Outdoor Lighting Management Solution (“Solution”). The Solution must include Lighting Management Software (“LMS” or “Software”) and networked field devices Hardware (“Controller(s)”).
- 1.2 The goal of the Solution is to (1) improve the reliability, maintenance, and operational efficiency of the City’s outdoor lighting; (2) Reduce energy usage and further the City’s sustainability efforts; and (3) acquire a scalable Solution to meet City’s future needs and requirements, including the Internet of Things (“IoT”).

2 **PROJECT STAFF**

2.1 City’s Project Manager

Name: John Wildemuth	Phone No.: (408) 975-7257
Department: Public Works	E-mail: john.wildemuth@sanjoseca.gov
Address: 1661 Senter Rd, San Jose, CA 95112	

2.2 Contractor’s Project Manager and Other Staffing

Identified below are the Contractor’s project manager and subcontractor(s) and/or employee(s) of the Contractor who will be principally responsible for delivering the work set forth in this Scope of Services.

Contractor’s Project Manager	
Name: Gaetano Assetta	Phone No.: (781) 530-8985
Address: 401 E Las Olas Blvd, Suite 1750 Fort Lauderdale FL 33301	E-mail: gassetta@ubicquia.com
Other Staffing	
Name	Assignment
1. Greg Steininger	VP of Sales
2. KT Burnes	Area Sales Manager (West)
3. Trey Dunn	Field Engineering Operations Manager
4. Joseph Ambrosich	Sr. Field Engineer

3 **General Requirements**

- 3.1 Contractor shall deliver to City 2,000 Controllers within four months of oncontract execution, with the remainder delivered in additional shipments of 2,000 Controllers, in roughly even monthly intervals to complete the total of 8,000 estimated Controllers required for the project.
- 3.2 Controller installation services are not included in this Agreement and are not considered in scope. The City has contracted with an LED Conversion vendor through a separate agreement who will be providing services to convert each light fixture to LED and install the Controllers provided through this Agreement.
- 3.3 Contractor must complete delivery and implementation of the Solution within one (1) year from contract execution.
- 3.4 Solution must be capable of scaling to 80,000 control points.
- 3.5 The Contractor's Solution must allow the City to independently manage its lighting utilizing the LMS.
- 3.6 Solution must meet all mandatory features and functions as specified in Exhibit A-2 Features and Functionality Matrix.

4 **Hardware (Controller) Requirements**

- 4.1 The awarded Contractor shall provide Controllers that are integrated into the LMS and include the following:
 - 4.1.1 **Updated firmware:** All Controllers shall be delivered with the more recent firmware available.
 - 4.1.2 **Photoelectric Controls:** Photoelectric sensors that measure ambient light levels and compare it with a preset threshold, e.g., to automatically turn on lights at dusk and turn off lights at dawn.
 - 4.1.3 **Connectors:** Connector nodes that transmit location and operational information must be plug and play with standard NEMA 7 pin socket.
- 4.2 Controllers must be capable of normal operation in ambient temperatures ranging from -30 degrees C to 70 degrees C.
- 4.3 Controllers installed externally or away from light fixtures must be housed in enclosures rated IEC 60529 IP66 or NEMA Type 4X.
- 4.4 Controllers must operate at a Universal AC input (RMS Volts) 120-480 (nominal $\pm 10\%$) input.
- 4.5 Controllers must be integrated (mechanically and electrically connected) at control points external to fixtures, using an ANSI/NEMA C136.41 standard 7-pin polarized twist-lock connector for both electrical and dimming control signal connectivity.
- 4.6 Controllers must be capable of actuating the status (ON state, OFF state) of light fixtures.

- 4.7 Controllers must be capable of actuating a light fixture dimmed or boosted state by creating a control signal that complies with a specified DALI or PWM standard with 0-10V dimming capability (e.g., IEC 62386).
- 4.8 Actuated changes to light fixtures dimmed or boosted states by Controllers must be capable of 0%-100% stepless dimming.
- 4.9 Controllers must be capable of measuring and monitoring over time the power quality at each control point, for the light fixture and the controller, the following:
 - 4.9.1 RMS input voltage (Volts)
 - 4.9.2 RMS input current (Amps)
 - 4.9.3 Apparent power (VA)
 - 4.9.4 True input power (Watts)
 - 4.9.5 Power factor
 - 4.9.6 Average input power factor in the on state
 - 4.9.7 Cumulative ON state time in minutes or hours
- 4.10 Controllers must be revenue grade certified and measure energy consumption with utility grade accuracy and precision $\pm 0.5\%$.
- 4.11 Controllers must be capable of integrally sensing and monitoring the following:
 - 4.11.1 expected sunrise and sunset times over time at minimum ambient light level (e.g., via a Photoelectric Sensor)
 - 4.11.2 GPS location over time
 - 4.11.3 temperature over time
 - 4.11.4 pole tilt levels over/under defined parameters
 - 4.11.5 vibration levels over/under defined parameters
- 4.12 Controllers must be capable of logging cumulative hours in the light fixtures ON state for each control point and cumulative energy consumption of each control point.
- 4.13 During offline operation, Controllers must:
 - 4.13.1 notify the operations panel of loss of power,
 - 4.13.2 retain the schedule it had prior to power loss,
 - 4.13.3 store the offline time-stamped Controller statuses for online, offline, warning or error codes,
 - 4.13.4 store measurements of all offline parameters at a storing frequency of not less than once every 60 minutes, including storing the last values preceding offline cause, and continue to cumulate necessary logging, such as run time and energy consumption, and
 - 4.13.5 storing measurements of all offline parameters at the specified storing frequency for a storing period of greater than 2 days.

- 4.14 Before commissioning, the Controller must default to the photocell.
- 4.15 Control node and communication devices must be UL or ETL listed.

5 **Software (LMS) Requirements**

The LMS will be used by City staff for asset management of facility lights, including managing lighting inventory, work orders, and dispatching crews and must meet the following requirements:

- 5.1.1 “Plug and play” or commercial off the shelf (COTS).
- 5.1.2 Software as a Service (SaaS) or Contractor-hosted LMS that is browser agnostic and compatible with the latest versions of Apple Safari, Google Chrome, Microsoft Internet Explorer, Microsoft Edge, and Mozilla Firefox, at a minimum.
- 5.1.3 Must support a minimum of 50 simultaneous users without diminished capacity.
- 5.1.4 Must be available 24x7x365 days per year with a 99.9% uptime, excluding scheduled maintenance (see Section 11 Exhibit A-1 Scope of Services for additional service level requirements).
- 5.1.5 Capable of storing asset, component, schedules, manual overrides, alarm triggers, burn hours, voltages, failures, maintenance, and energy consumption data.
- 5.1.6 Enables control and monitoring of fixtures via a cellular connectivity network.
- 5.1.7 Manages, stores, and displays data from networked components and other aspects of the Solution.
- 5.1.8 Pulls data from other systems used to ingest, process, and store data from the fixtures and other networked components.
- 5.1.9 Allows City staff to query or update data both in the office or in the field.
- 5.1.10 Inventory Tracking and Backfill Alerts
 - 5.1.10.1 Asset management to maintain information on each piece of lighting equipment, e.g., type, model, wattages, installation, maintenance, removal, disposal dates, backfill alerts, and warranty information.
 - 5.1.10.2 Consolidated, single inventory accessible by required departments based on user permissions.
- 5.1.11 Uniform Data Collection on Performance Measurements
 - 5.1.11.1 GIS real-time alerts
 - 5.1.11.2 Predictive and preventative maintenance capabilities
 - 5.1.11.3 Integration or connector to City's asset management systems
 - 5.1.11.4 Asset failure/resolution documentation repository
- 5.1.12 Dynamic grouping for operational or diagnostic ease

- 5.1.12.1 GPS enabled auto-commissioning of controllers
- 5.1.12.2 Quality assurance/ testing
- 5.1.12.3 System must provide notifications to identified users via SMS text or email (per the users choosing) when Controller detects and reports an interruption of power.
- 5.1.12.4 Ability to view load side power consumption of the fixture at each node
- 5.1.13 Mobile applications
 - 5.1.13.1 Must allow City or contracted field technicians to receive, track, and manage work orders, access light asset and inventory information, and edit information while in the field via mobile device (e.g., smart phone or tablet)
 - 5.1.13.2 Interfaces must be cross-platform compatible (e.g. desktop, iOS, Android, etc.) and must use responsive web design to ensure readability across multiple device types and sizes
- 5.1.14 Remote monitoring, programming, and control

Remote automatic ON/OFF control with scheduled group dimming (programmed) and dynamic group dimming in real time (i.e., one command to turn all selected fixtures ON or OFF or dim by selected percentage).
- 5.1.15 Fail safe and Multilevel Back-Up

LMS shall default to safe mode in the event of an unplanned system failure.
- 5.1.16 Energy Management
 - 5.1.16.1 Runtime logging
 - 5.1.16.2 Energy logging
 - 5.1.16.3 Utility certifiable energy metering (dimmable LS2 tariff)
 - 5.1.16.4 Demand response capabilities
- 5.1.17 Adaptive Lighting
 - 5.1.17.1 Sensors for energy conservation in low use areas
 - 5.1.17.2 Heatmaps to track pedestrian traffic
 - 5.1.17.3 Dusk/dawn automation
 - 5.1.17.4 Preference for celestial scheduling with ability to adjust and set offsets
- 5.1.18 Emergency Response Lighting

Emergency-response operators must be able to activate select lights to help guide emergency workers to specific locations.
- 5.1.19 LMS Data Management, Reporting, and Analytics

The LMS must provide robust data management and reporting to allow City staff to generate usage and operational statistics reports, etc. The reporting tool(s) should also provide ad hoc reporting capability that limits the need for technical personnel involvement.

5.1.20 Data Quality and Master Data Management Processes

5.1.20.1 The City's enterprise data strategy is in process and includes a plan for enterprise data storage and data portal. Information on the City's enterprise data architecture, Open Data Community Architecture Version 3.0, can be found at <https://www.sanjoseca.gov/home/showdocument?id=2398>.

5.1.20.2 A rigorous program of master data management and data quality must exist where inputs from different source systems may occur. This includes the ability to perform automated testing and alerting when data pipelines break or produce errors. Access levels for authorized City staff must be sufficient to conduct root cause analysis.

5.1.20.3 All processes and scripts for cleaning or transforming data in any way shall be reusable or built into ETL pipelines.

5.1.21 Standardized Data Export Functionality

All reports (canned, custom, and ad hoc) be exportable into standard formats for not only the report but for the underlying data, while considering size limitations or security controls. Standard formats include XLS, JSON, PDF, CSV, or other standard image or data formats.

5.1.22 Dashboard Reporting

5.1.22.1 All lighting details must be accessible to authorized City users through a suite of dashboards.

5.1.22.2 Dashboards must have a standardized universal design and layout.

5.1.22.3 Templates and other user experience material must be provided to City for use in future dashboard creation.

5.1.22.4 New dashboards, as required, must be creatable, deployable, and manageable by the City.

5.1.23 Custom and Ad-Hoc Reporting and Analytical Capabilities

5.1.23.1 All data must be available for use in City's current or future business intelligence platforms.

5.1.23.2 Templates for reports for user experience shall be provided for City staff to create, deploy, and manage to maximize availability of data to City users.

5.1.23.3 Analytics outputs must be able to be distributed and also secured properly as required in Exhibit F-1 Information Technology and Security Requirements.

5.1.23.4 Software shall include advanced analytics functionality, such as using machine learning for predictive maintenance and device replacement, with the capacity to refine and deploy new models as opportunities arise.

5.1.24 Identity Management (i.e., administrative rights, group-based permissions, individual user permissions, and granularity of access controls)

5.1.24.1 Must provide the City with the ability to set user permissions and access to dashboards, reports, data, servers, and administrative functions based on users, department, roles, etc.

5.1.24.2 Security Assertion Markup Language (SAML) 2.0 compliant to allow for Single Sign On (SSO) authentication.

5.1.25 Platform Architecture

The City has a multi-cloud strategy. The City prefers the Solution is hosted outside of the City's data centers and maintained by the Contractor. The hosting facilities must meet the requirements provided in Exhibit F-1 Information Technology and Security Requirements.

5.1.26 All City data must be hosted and retained in the United States.

6 Network Requirements

The field device network connects and enables communication between the field devices, such as the Controllers, and the LMS. The network consists of connectivity systems that function cooperatively and/or interdependently to provide a chain of command for lighting.

6.1 Contractor shall provide connectivity from the Controllers to the City's network.

6.2 The optimal outcome for the City is to leverage the lighting control connectivity to support future connectivity for other IoT devices.

6.3 Currently, the City primarily uses local control via a lighting control panel or a timeclock in conjunction with a photocell for lighting control.

6.4 The connectivity used as part of the Solution must integrate with the LMS and the City's networks through a cellular service.

6.5 City will contract directly with AT&T for recurring cellular network charges that will allow data growth and increasing data traffic, while maintaining the required Controller command latency and reporting frequency over the cellular network connectivity supporting IPv6.

6.6 Connectivity must be suitable for outdoor lighting controls and be optimized for:

6.6.1 low bandwidth;

6.6.2 low data rates; and

6.6.3 low power consumption.

6.7 Connectivity must have sufficient bandwidth to support over-the-air (OTA) software and firmware updates to the outdoor lighting controls.

- 6.8 Network must support higher bandwidth and data rates and power consumption without significant additional capital and operating costs driven by high commercial data rates.
- 6.9 The outdoor lighting controls and LMS data communications must be secured using a standard-based security protocol (e.g., TLS, DTLS, IPsec).
- 6.10 Communication between the outdoor lighting controls, LMS and the City's network must be able to authenticate each other by a standards-based mechanism (e.g., X.509 certificates or pre-shared keys).
- 6.11 Communication between the outdoor lighting controls, the LMS, and the City's network must be able to authorize each other by a standard-based mechanism (e.g., X.509 certificates).

7 **Backup & Recovery Requirements**

- 7.1 Contractor must maintain Backup and Recovery Plans and procedures to ensure continuous operation with minimal to no interruption or degradation of services to the City including:
 - 7.1.1 Regular (periodic) backup and recovery testing.
 - 7.1.2 Incremental and full back-up capabilities with zero disruption to operations (99.9% availability)
- 7.2 Backup and recovery plan execution procedure:
 - 7.2.1 Key tasks
 - 7.2.2 Testing frequency
 - 7.2.3 Results reporting
 - 7.2.4 Key roles and responsibilities for the City and for the Contractor in the event the LMS goes down
- 7.3 In the event of a technology or other failure at the primary processing center, the Contractor must provide a failover site for City's use identical to the production environment.

8 **Security Requirements**

- 8.1 The Solution must include security features to protect the confidentiality, integrity, and availability of the Software and the data that it stores, processes, and transmits.
- 8.2 Contractor shall comply with all IT Security requirements as specified in Exhibit F-1 Information Technology and Security Requirements.
- 8.3 The Solution must comply with applicable City's Information and Systems Security Policy 1.7.6. To ensure that best practices are woven into all elements of the City's technology infrastructure, the City's security posture is built off of the industry standard framework of the NIST Cybersecurity Framework (CSF).
- 8.4 The awarded Contractor must adhere to the City's IT security policy and standards, as may be updated from time to time, including the City's *Information Security Standard*

Handbook, which is a flow down from the NIST Cybersecurity Framework v1.1 and will be provided to finalists upon request.

- 8.5 The Solution must provide built-in security zones that prevent system-wide attacks through the use of segmentation.
- 8.6 All devices included in the Solution must be secured against unauthorized access through the use of multifactor authentication and role-based access control:
 - 8.6.1 The platform must support logging of security events generated by devices and/or controllers to San José Security Operations Center (SOC) environment.
 - 8.6.2 The platform must provide intrusion detection and prevention capabilities.
 - 8.6.3 The Solution must include device implementation guidance mapped to the NIST Cybersecurity Framework (CSF), specifically addressing challenges identified in NISTIR 8228, Considerations for Managing IoT Cybersecurity and Privacy Risks.
- 8.7 All components of the Solution must be patched against known vulnerabilities and include the ability to apply future patches from a centralized console.
- 8.8 Communication between devices, controllers, and end users must be protected with an encryption algorithm listed in FIPS 140-2 Annex A.

9 **Documentation Requirements**

- 9.1 Awarded Contractor shall provide Microsoft Word or PDF copies of all documentation listed below with unlimited downloads, including any updates. All documentation shall be digital and searchable.
 - 9.1.1 Detailed Software and user documentation for LMS operation;
 - 9.1.2 Technical manuals and documentation for components such as any data management, reporting, and visualization tools;
 - 9.1.3 Implementation documentation for installation, configuration, testing, interfaces, and data conversion;
 - 9.1.4 Documentation pertaining to ongoing work progress, geographic information system (“GIS”) data, or other documentation for lighting inventory on controllers, operations and ongoing maintenance; and
 - 9.1.5 API documentation to enable City teams who support other City systems to perform integration activities.
- 9.2 LMS documentation shall include all relevant technical and functional detail to enable City personnel to perform system maintenance, as well as identify, troubleshoot, and resolve issues.

10 **Training/ Knowledge Transfer and Co-Learning Plan**

- 10.1 The Contractor shall provide training in accordance with a City-approved training plan. Training plan shall include but not be limited to the following:
 - 10.1.1 Approach to training and knowledge transfer;

- 10.1.2 Instructor-led training;
 - 10.1.3 Outline of training;
 - 10.1.4 Required number of days and duration of training;
 - 10.1.5 Three (3) training sessions for each level of user access;
 - 10.1.6 At least one (1) training session for each level must be on site;
 - 10.1.7 List of training materials (e.g., training manuals, training videos, online training materials, etc.); and
 - 10.1.8 Technical requirements for the training computers.
- 10.2 Contractor must allow or provide recordings of all virtual training sessions in a format pre-approved by the City.
- 10.3 Since the Controllers will be installed by a third-party contractor, Contractor must provide training and/or certifications for the Solution Hardware, if such training and/or certifications are required to maintain the equipment warranty.

11 Maintenance & Support

- 11.1 Contractor shall provide a warranty for the Solution, including all Hardware, Software, and Services, that begins from the date of acceptance by the City. The Contractor must provide the City with appropriate signed warranty certificates immediately upon acceptance (if any).
- 11.2 Contractor must ensure that all manufacturers' warranties (if any) are transferred to the City and must provide to the City copies of such warranties.
- 11.3 Contractor shall provide a 10-year full replacement maintenance and support plan on all provided Hardware which must include all costs associated with repairing and/or replacing the equipment, including parts, materials, shipping, and handling during the warranty period.
- 11.4 In the event of a Hardware failure, Contractor must diagnose the issue within 48-hours and deliver replacement or repair within five (5) business days.
- 11.5 Contractor shall provide ongoing maintenance and support on all Software and firmware for up to ten (10) years subject to City's annual renewal.
- 11.6 Contractor must provide expected failure rates over time so that the City may compare with failure rates Contractor provided in proposal as well as industry standard failure rates for similar products.
- 11.7 Contractor must maintain a website that provides 24x7x365 access to technical information and software patches.
- 11.8 Contractor must have an online trouble reporting system that tracks open trouble tickets and includes automatic escalation and notification based on service level requirements and issue progress.
- 11.9 Contractor must provide technical support 24x7x365 by phone, email, and online portal.

11.10 Technical support must include unlimited incidents.

11.11 Technical support shall be provided in accordance with the following service levels:

Severity Level	Definition	Maximum Response Time	Target Resolution Time
1	<ul style="list-style-type: none"> System down. Business operations have been severely disrupted. No work around available. 	15 minutes	2 hours
2	<ul style="list-style-type: none"> Major functionality is severely impaired. A temporary work around is available. Operations can continue in a restricted fashion, although long-term productivity might be adversely affected. Persistent service degradation (e.g., unacceptably slow response times). 	1 hours	4 hours
3	<ul style="list-style-type: none"> Partial, non-critical loss of functionality. Problem causing minor loss of features/functionality. Impaired operations of some components, but still usable. A temporary workaround is available. 	4 hours	24 hours

11.12 Contractor must provide guaranteed minimum 99.9% uptime, excluding scheduled maintenance. Uptime applies to Software only, and expressly excludes individual Hardware failure, which shall be covered under Contractor’s Hardware warranty. The minimum guaranteed uptime shall exclude any software, hardware, system, network, facility, or other matter not supplied by Contractor pursuant to this Agreement or any force majeure event.

11.13 Contractor must include penalties such as service credits, liquidated damages, etc. for any failure to meet these Service Levels and minimum uptime.

11.14 Infrastructure host operating systems, firmware, and server management software updates must be supported for the term of the contract and are included as part of maintenance and support.

11.15 Contractor must notify the City at least 5 business days in advance of deploying any potentially service-impacting modifications (excluding emergency patches/fixes) and at least 15 business days in advance of its intent to release any major improvements or Solution enhancements, including a description of the intended enhancements or improvements.

11.16 Contractor must provide remote monitoring of the Solution and must proactively alert the City of issues.

EXHIBIT A-2
FUNCTIONALITY AND FEATURES MATRIX

Proposer Company Name: UBICQUIA				
Instructions:				
Vendor must complete the entire Questionnaire and include it in their Technical Proposal pursuant to Section 10.4.C of the RFP.				
Importance:				
Features and Functionality are categorized by importance and include Mandatory , Highly Preferred , and Preferred and will be weighted accordingly.				
Capability:				
Proposers should select (from the dropdown (the appropriate Capability category (Off the Shelf/Configurable by the City, Configurable by Vendor, Available with Customization, or Not Available). Line items indicated as "Not Available" will result in disqualification if it is a Mandatory Function/Feature. Line items left blank will be assumed as "Not Available."				
Capability:				
Off the Shelf / Configurable by City	The feature or functionality is provided "off the shelf" or "out-of-the box" or is fully configurable by the City with no modification to the source code or Vendor involvement required.			
Configurable by Vendor	The feature or functionality requires no modification to the source code but must be configured by the Vendor.			
Available with Customization	A modification to the Software or additional programming is required to provide this feature or functionality. In the comments section, provide a description of how much work the modification(s) will entail and if it will require additional cost.			
Not Available	This functionality is not available in the Proposed Solution.			
#	Importance		Capability	Comments / Clarifications
General Software Requirements and User Administration				
1	Mandatory	LMS is a software-as-a-service or hosted solution.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
2	Mandatory	LMS help information is accessible from the GUI.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
3	Mandatory	Users must securely authenticate into the system to gain access.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.

#	Importance		Capability	Comments / Clarifications
4	Highly Preferred	Software supports integration with Active Directory.	Available with Customization	API can be used for interoperability. ICC: Can be integrated.
5	Highly Preferred	LMS allows administrators to add users to the system.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
6	Highly Preferred	LMS allows administrators to assign roles to users within the system.	Off the Shelf / Configurable by the City	ICC: Has 16 different levels of role-based access controls designed to allow San Jose to more effectively manage not only their lighting network but also other 3rd party assets and locations. Lighting can be managed directly from ICC or within Ubivu.
7	Highly Preferred	A login page will identify the application and provide a means for the user to access the system.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
8	Highly Preferred	LMS supports session timeout at a configurable frequency.	Configurable by Vendor	Ubivu: Available with customization. Feature not configured. A user can only be logged in on one device but no timeout is set. ICC: Configurable by vendor. Timeout is default to 72 hours. User can have 3 sessions simultaneously on desktop/tablet.
9	Highly Preferred	All administrator and user operations are logged in the system and may be accessed via report.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
LMS Interface				
10	Mandatory	LMS allows users to search, view, and edit lighting system data via a map-based interface.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.

#	Importance		Capability	Comments / Clarifications
11	Mandatory	LMS provides a series of API's that the City may use to connect to their preexisting GIS system.	Off the Shelf / Configurable by the City	ICC: Has incorporated the UbiVu APIs and has northbound APIs that cities may ingest. It is designed to ingest with the City of San Jose's Ticketing and Work Order systems. Provided the GIS system has accessible APIs, ICC will integrate city's GIS system into ICC enhancing situational awareness and mission assurance through a single pane of glass.
12	Mandatory	Users can pan in any direction.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
13	Mandatory	Users may zoom to a point or a light fixture group.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
14	Mandatory	LMS allows users to view different point-based individual units or grouped/co-located devices.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
15	Mandatory	LMS allows users to view Control Point locations.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
16	Mandatory	LMS allows users to view attributes of each Control Point including fixture type and/or sensor type.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
17	Mandatory	LMS allows users to view the status of each controller (i.e., online, online reporting error, offline)	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
18	Mandatory	LMS allows users to view light fixture status (On, Off, Dimmed, power Loss, Offline etc.)	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.

#	Importance		Capability	Comments / Clarifications
19	Preferred	LMS allows users to view power quality requirements (current requirement, peak requirement).	Off the Shelf / Configurable by the City	Custom data field can be configured by City
20	Preferred	LMS enables users to view the peak requirement in a prescribed time period (e.g., last 24 hours).	Available with Customization	Feature can be developed
21	Mandatory	LMS allows users to view lighting system energy consumption in a predefined time period (Daily over last prescribed time period – e.g., Daily for last 7 days).	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
22	Mandatory	Users have the ability to search the map for a specific unit or group of units.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
23	Mandatory	Users have the ability to draw/define their own geographic boundaries and group, schedule, control around or within that custom boundary or point.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
24	Mandatory	Users have the ability to query multiple data types at one time.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
25	Mandatory	Users have the ability to add one or more query filters per data type based on the schema for each data type, and using standard operators (e.g., show me all lights that are out in a particular area)	Off the Shelf / Configurable by the City	ICC: A robust reporting framework is available off the shelf and is configurable by the city. Incident reports and integration with ticketing/dispatch/work order systems is included with optional analytics engine.
26	Preferred	Users have the ability to name and save queries that are run regularly.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
27	Preferred	Users have the ability to select and run a saved query.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
28	Mandatory	Controller or sensor data elements display an information window with data elements on hover over or on click for each point.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.

#	Importance		Capability	Comments / Clarifications
29	Mandatory	Users may configure the reporting frequency of online Control Point parameters for a single Control Point or groups of Control Points.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
30	Mandatory	LMS allows search for single control point (lighting controller) operating status by pole ID or address	Configurable by Vendor	Ubivu: Available with Customization. This feature can be developed. ICC: Off the Shelf/Configurable by the city.
31	Mandatory	LMS must allow for at least two customized user interfaces based on assigned user role: one interface for street lighting and a separate interface for facility lighting.	Off the Shelf / Configurable by the City	Ubivu: Different permission levels allow different actions available for each user type. ICC: Off the Shelf Configurable by the city with over 15 different roles/levels of access. Facilities asset/lighting/location management all able to be integrated into single interface. Ability to give facilities personnel lesser access to street lighting and vice versa. ICC is vendor agnostic and can ingest 3rd party sensors.
Configuration Capabilities				
32	Mandatory	LMS is capable of defining light fixtures groups provided by the City.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
33	Mandatory	Users may modify the on/off, dimmed state of a single light fixtures or group of light fixtures.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
34	Mandatory	Users may configure and modify a predefined schedule for the on/off, dimmed or boosted state of a single light fixtures or a group of light fixtures.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.

#	Importance		Capability	Comments / Clarifications
35	Mandatory	LMS does not limit the number of times/events per day that may be scheduled.	Off the Shelf / Configurable by the City	System limits schedule actions to 32, however multiple schedules can be configured.
36	Mandatory	Schedules may be either time-based, whereby Controllers modify light fixtures operation when a specific time in the schedule occurs, or event-based, whereby Controllers modify light fixtures operation when the next event in the schedule occurs.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
37	Mandatory	LMS is capable of creating programs for time-based Scheduled Control that are defined: On a daily recurring basis, by specific day types, for special events, and the scheduling should allow exception days, for instance holidays.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
38	Mandatory	LMS is capable of Dynamic Control, whereby the on/off, dimmed, or boosted state of a single light fixtures or a group of light fixtures is modified in response to dynamic inputs from sensors or commands from the LMS itself.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
39	Mandatory	LMS is capable of Light Output Control, whereby the Luminaire dimmed or boosted state is actuated to achieve a desired light output (percent relative lumens).	Off the Shelf / Configurable by the City	Specific top trim feature requires manual configuration
40	Mandatory	LMS is capable of Constant Light Output Control, whereby the light fixtures are dimmed or boosted automatically actuated to achieve a maintained constant light output (lumens) over time by compensating for light fixtures lumen depreciation.	Available with Customization	Compensation for lumen depreciation can be configured manually on a yearly basis. At this time the feature is not automatic but can be developed.
41	Mandatory	LMS can ensure that a maximum light fixtures true input power (watts) is never exceeded.	Off the Shelf / Configurable by the City	Specific top trim feature requires manual configuration
42	Highly Preferred	LMS is capable of auto commissioning nodes based on GPS location.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
Reporting				
43	Mandatory	LMS is capable of creating remote monitoring reports based on the generation of an error message or on a schedule.	Off the Shelf / Configurable by the City	

#	Importance		Capability	Comments / Clarifications
44	Mandatory	LMS is capable of creating pre-defined remote monitoring reports containing instances of communication loss between field devices and the LMS	Off the Shelf / Configurable by the City	
45	Mandatory	LMS is capable of creating pre-defined remote monitoring reports containing control points with error conditions, sorted by error type and/or electrical service point location	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
46	Mandatory	LMS is capable of creating pre-defined remote monitoring reports containing energy consumption data for individual light fixtures and/or groups of light fixtures	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
47	Highly Preferred	LMS is capable of creating pre-defined remote monitoring reports containing logs of work assigned, dispatched and completion from the work order dispatch system	Configurable by Vendor	Ubivu: Available with Customization. This feature can be developed. ICC: Once initially configured by AT&T and integrated with city systems, ICC's robust reporting can be used and is off the shelf.
48	Mandatory	LMS is capable of creating customized remote monitoring reports.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
49	Preferred	LMS is capable of creating pre-defined asset reports.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
50	Mandatory	LMS is capable of creating customized reports on operating status of assets.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
51	Mandatory	Administrators or Network Operations staff may configure the reporting frequency of online Control Point parameters for all Control Points.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
51	Highly Preferred	Administrators or Network Operations staff may configure the reporting frequency of online Control Point parameters for a single control point or groups of control points.	Off the Shelf / Configurable by the City	Ubivu: System wide alerts are sent at configured frequency. ICC: Customized alerts and notifications can be created based on role.
Notifications and Alerts				

#	Importance		Capability	Comments / Clarifications
52	Mandatory	LMS is capable of generating outage or alert notifications related to system components, which are specified (pre-defined and/or customized).	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
53	Mandatory	Notifications are automatically sent to assigned users and/or user groups via email or SMS.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
54	Mandatory	LMS is capable of detecting and reporting wire or cable theft	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
55	Highly Preferred	LMS is capable of comparing all reported Control Point parameters with optional pre-defined maximum and minimum thresholds, and generating error messages in real-time (based on reported data availability) for any condition that violates a specified threshold a specified number of times.	Off the Shelf / Configurable by the City	Feature is available for some control point parameters. More control point parameter alarms can be developed.
Work Order Management				
56	Mandatory	LMS is capable of integrating or interfacing with the City's primary work order system to manage service outages, route and dispatch crews for surveying and maintenance.	Configurable by Vendor	Ubivu: Available with customization. The API can be used to facilitate communication between systems. ICC: Configurable by Vendor. ICC already integrates with common work order and service outage tools. AT&T's professional services team can provide integration work.
57	Mandatory	LMS shall be mobile-friendly, allowing field personnel to receive and manage their work via GPS-enabled mobile devices that include to make edits to the inventory via form and/or map interfaces.	Off the Shelf / Configurable by the City	ICC: Mobile-friendly designed for easy asset management for installation and repair subcontractors. Can also incorporate asset and fleet tracking.

#	Importance		Capability	Comments / Clarifications
58	Mandatory	LMS shall contain an asset management system that maintains information about each lighting structure and its associated features, including type, model, and wattages; installation, maintenance, removal and disposal dates, and warranty information.	Off the Shelf / Configurable by the City	In addition to allowing this data within both Ubivu & ICC, White glove support and 7x24 support for critical issues is included to aid in timely repair.
59	Highly Preferred	LMS shall contain an asset management system that maintains information about each light and its associated circuitry, controller, and power feed.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
Application Programming Interfaces (APIs)				
60	Mandatory	LMS has an API capable of supporting integration through web services (e.g., SOAP, Restful).	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
61	Mandatory	LMS's Scheduled Control interface provides an interface protocol (e.g., REST, SOAP, XML) to allow third party systems to create programs for alternative schedules to be automated into the LMS Schedule Control.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
62	Mandatory	The API supports programmatically modifying or overriding the on/off, dimmed, or boosted state of a single light fixtures or group of light fixtures (e.g., when a traffic incident is reported via 911, the light levels of the lights in the surrounding area will be raised automatically).	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.
63	Mandatory	The API supports getting/retrieving information about individual controllers/light fixtures that may then be imported into another system or used in a program to kick-off an event in a third-party system.	Off the Shelf / Configurable by the City	Provide comments/clarification here if required.

#	Importance		Capability	Comments / Clarifications
64	Mandatory	LMS is interoperable with existing or to be deployed Backhaul Communication Network(s).	Configurable by Vendor	Ubivu: Available with Customization. Data is transferred via LTE backhaul. If BCN is LTE based then interoperability is off the shelf. ICC: Sensors communicate today using Ubiqquia APN on cellular network to Ubiqquia LMS. ICC APIs utilize a private cloud to communicate with Ubivu LMS and is interoperable with existing/deployed networks.
65	Mandatory	LMS is interoperable with existing or to be deployed field devices.	Off the Shelf / Configurable by the City	ICC: designed to be vendor diagnostic and incorporate many different field device types.
66	Mandatory	LMS is interoperable with existing or to be deployed devices Sensor(s).	Off the Shelf / Configurable by the City	ICC: designed to be vendor diagnostic and incorporate many different field sensors.

EXHIBIT A-3
PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Implementation of this project will proceed in accordance with the Preliminary Project Implementation Schedule set forth below in Table A1, except as may be modified into a Final Project Implementation Schedule that is approved by the City during project initiation, and shall reflect tasks in the appropriate order with estimated dates and based on elapsed time as approved by the City. The Final Project Implementation Schedule will become the governing project schedule incorporated into the Agreement. The Project Implementation Schedule is based upon work being accomplished Monday through Friday during normal business hours (defined as 8:00am to 5:00pm Pacific Time), with the exception of City holidays.

Table A1: Preliminary Project Implementation Schedule

	Project Phase	Responsible Party	Expected Completion
Solution Design and Administrative Tasks			
1	Engage Stakeholders (based on desired use cases); identify Project Management Organization	City	Within 1 week of Agreement Execution
2	Provide GIS maps of Streetlighting assets (owned by City vs Utility)	City	Within 1 week of Agreement execution
3	Provide UbiVu Dashboard Demo/Training	City and Contractor	Within 2 weeks of Agreement execution
6	Set up customized UbiVu panel and assign users.	City and Contractor	Within 2 weeks of Agreement execution
Implementation			
7	Delivery date/scheduling of UbiCells.	Contractor	As per section 3.1 of Exhibit A-1
8	Installation and Field Activation of UbiCells (“Installation”).	City	
9	Commissioning (post Installation): Deployment and Configuration of UbiCells	Contractor	Immediately upon Installation
10	Ubicell Validation (post Installation): Verify lighting and meter functions.	Contractor	Within 1 week of Installation

	Project Phase	Responsible Party	Expected Completion
	Operations and Support*		
11	Customer Support: Upon installation of the first UbiCell and ending upon expiration of service licenses.	Contractor	Ongoing
12	End User Training: Project Deployment Training (Node Manager); Project Management Training (UbiVu Control Console)	Contractor	Ongoing
13	UbiVu Dashboard Programming and Feature Updates	Contractor	Ongoing
14	Remote Troubleshooting for both Hardware and Software products	Contractor	Ongoing

**EXHIBIT A-4
FINAL ACCEPTANCE CERTIFICATE**

After the City is satisfied with all test results and resolutions, the City will initiate execution of the Final Acceptance Certificate.

FINAL ACCEPTANCE CERTIFICATE

Customer Name: City of San José (“City”)

Project Name: Smart Outdoor Light Management Solution

This Final Acceptance Certificate memorializes the occurrence of Final Acceptance.

Contractor and the City acknowledge that:

Contractor has delivered the
_____Hardware
_____Software
_____Services
and associated documentation promised under this Agreement.

1. The component(s) noted above is accepted, and all punch list items generated during testing have been complete.
2. By acknowledging the Final Acceptance of the above, the City agrees to pay any remaining and approved outstanding invoices to Contractor associated with the component(s) noted above, including previously withheld retainage.

City of San José (“City”)

Ubicquia, Inc. (“Contractor”)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT B COMPENSATION

1 Compensation and Payment Terms

- 1.1 The maximum amount payable for all products and services provided under this Agreement shall not exceed Six Hundred Fifty-Four Thousand Four Hundred Dollars (\$654,400) during the Initial Term. Any additional goods or services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional goods or services will be provided unless both Parties execute a Change Order outlining the goods and services requested and the compensation agreed for such goods and services.
- 1.2 Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following delivery and 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 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 deliverable under this Agreement, or inspection or testing thereof by City, shall not constitute acceptance or relieve Contractor of its obligations under this Agreement. City may inspect each deliverable and reject upon written notification to Contractor any that do not conform to the specifications or other requirements of this Agreement. Rejected deliverables shall be promptly corrected, repaired, or replaced by Contractor. If City receives deliverables with defects or nonconformities not reasonably apparent on inspection, the City reserves the right to require prompt correction, repair, or replacement by Contractor in accordance with Contractor's warranty obligations.

2 Project Performance and Payment Schedule

- 2.1 Work shall commence within two weeks of Agreement execution. All timeline dates are understood to be close of business, 5:00 pm Pacific Time. If timeline dates fall on a weekend or City holiday, the date is understood to be the next business day.
- 2.2 Compensation and payments shall be made to Contractor by City based on Net Thirty (30) days payment terms.
- 2.3 Ongoing Annual Services Invoicing Procedure: Contractor shall invoice the City annually for applicable ongoing services including subscription, technical support, maintenance, and hosting fees beginning on the date of final acceptance or the end of the Warranty Period. City shall prepay a year in advance for applicable ongoing subscription, technical support, maintenance, and hosting services provided under the Agreement.

2.4 The City agrees to compensate Contractor for the Services performed and the Software and software customizations (if any) provided in accordance with the terms and conditions of this Agreement. Contractor shall invoice City in accordance with the Payment Schedule in Table B1 below:

Table B1: Initial Term Compensation

Initial Term Costs	Total Not to Exceed	Payment Schedule
8,000 Controllers (in multiple shipments as per section 3.1 of Exhibit A-1)	\$598,400	30 days from invoice after each shipment
10-year Controller Support and Maintenance	40,000	Pre-paid for shipped amount with Controller invoice
Software License up to 50 users including Implementation, Support, and Maintenance	16,000	Final Acceptance Certificate.*
MAXIMUM COMPENSATION (INITIAL TERM)	\$654,400	

*The signed Final Acceptance Certificate (Exhibit A - 4) triggers payment

Table B2: Ongoing Costs during Option Years

Ongoing Costs	Option 1 (Year 2)	Option 2 (Year 3)	Option 3 (Year 4)	Option 4 (Year 5)	Total Not to Exceed
Software License including Implementation, Support and Maintenance	16,000	16,000	16,000	16,000	64,000

Table B3: Additional Equipment

Additional Equipment	Rate
Additional Controllers	\$74.80/Unit
AQM+ Included equipment including 3 years Support and Maintenance	\$1,295/Unit
UbiHub AI-Inc equipment including 1 year of Connectivity, Software, Support and Maintenance	\$3,215/Unit
UbiHub WiFi-Inc equipment including 1 year of Connectivity, Software, Support and Maintenance	\$1,692/Unit

All amounts stated above are in United States Currency.

3 Renewal Period Compensation

- 3.1 After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 (“Options to Extend”) at the same rates as the Initial Term unless otherwise requested and agreed to in writing by the Parties.
- 3.2 Price Renegotiation. Contractor may request adjustments to compensation rates sixty (60) days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not increase by more than the PPI industry data for Software publishers - PCU5112105112105 (<https://beta.bls.gov/dataViewer/view/timeseries/PCU5112105112105>) and does not exceed 3% over the previous year’s fees, unless the City’s Living and/or Prevailing Wage, if applicable, increases by more than 3% or unless otherwise negotiated.
- 3.3 City shall provide Contractor prior written notice in the form of Exhibit E of its intention to exercise its option for the next term prior to the end of the then current term. The City’s Director of Finance or designee is authorized to exercise options on behalf of the City.

4 Additional Services

- 4.1 In the event the City requires additional services, Contractor shall provide a written quotation, at no cost to the City, of the type of Additional Service requested and the time required to complete the requested work.
- 4.2 Supplemental professional service rates shall not exceed the following:

Supplemental Services	Rate
Additional Post-Implementation Training	\$0/Hour
Additional Post-Implementation Data Migration and Integration Services	\$0/Hour
Custom Feature Development and Implementation	\$250/Hour
Customizations	\$250/Hour
Cost for Additional User Licenses	\$2.00/License

- 4.3 The City reserves the right to request a fixed priced quote in lieu of time and materials. Any fixed price quotes shall be consistent with or less than the agreed-upon additional service rates in Section 4.2 above and must be good for at least ninety (90) days.
- 4.4 Quotes must be approved by the City through an executed Change Order prior to any work being performed.

EXHIBIT C INSURANCE REQUIREMENTS

Contractor, at Contractor’s sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Contractor, its agents, representatives, employees or subcontractors or suppliers.

1 Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City’s Risk Manager.

Type of Insurance	Minimum Limit
<p>1 Commercial General Liability The coverage provided by Insurance Services Office “occurrence” form CG 0001, including coverages for contractual liability, personal injury/advertising injury, products/completed operations, broad form property damage, independent contractors, products and completed operations.</p>	<p>\$1,000,000 per occurrence for bodily injury, personal injury and property damage or \$2,000,000 annual aggregate.</p>
<p>2 Automobile Liability The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.</p>	<p>\$1,000,000 combined single limit per accident for bodily injury and property damage.</p>
<p>3 Workers’ Compensation and Employer Liability A: Workers Compensation as required by Statute and as required by the Labor Code of the State of California. B: Employers’ Liability</p>	<p>Coverage A: Statutory Coverage B: \$1M each accident/ each employee injury by disease</p>
<p>4 Professional Errors and Omissions Including coverages for negligent acts, errors, or omissions arising from professional services provided under this contract, with any deductible not to exceed \$25,000 each claim.</p>	<p>Not less than \$1,000,000 per claim.</p>
<p>5 Cyber & Technology Errors & Omission Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided under this agreement as well as all Contractor costs and fees, including damages it is obligated to pay Client or any third party, which are associated with damaged, lost or corrupted data. This may be met through a standalone policy or included as a component in a Commercial General Liability Policy.</p>	<p>Not less than \$2,000,000 each occurrence.</p>

2 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager. At the option of the City in writing, either: the insurer will reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Contractor will procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

3 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

3.1 General Liability and Automobile Liability Coverages

- 3.1.1 The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.
- 3.1.2 Contractor's insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of Contractor's insurance and shall not contribute with it.
- 3.1.3 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- 3.1.4 Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- 3.1.5 Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

3.2 Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3.3 All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in

limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

4 **Acceptability of Insurance**

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

5 **Verification of Coverage**

Contractor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by Contractor's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

6 **Subcontractors**

Contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT D CHANGE ORDER FORM

CHANGE ORDER # ___

Pursuant to Section 8 of the Agreement between Ubicquia, Inc. (“Contractor”) and the City of San José (“City”) for a Smart Outdoor Light Management Solution , the Agreement is hereby amended as follows:

(The following language is provided as an example of how to complete this form.)

1. Contractor shall provide the following additional services at the costs indicated below:

TOTAL	
-------	--

2. The following services, products, or deliverables are hereby deleted and the associated costs in amounts set forth below are also deleted.

TOTAL	
-------	--

3. Exhibit ___ is hereby amended to read as set forth in the Revised Exhibit ___ which is attached hereto.

4. All of the terms and conditions of the Agreement not modified by Change Order shall remain in full force and effect.

	Total Cost of Change	
	Total Credit of Change	
	Previous Amendments and/or Change Orders	
	Original Contract	

ACCEPTANCE

Contractor hereby agrees to accept the amount set forth herein as payment in full for the work described and further agrees that Contractor is entitled to no additional time or compensation for such work other than as set forth herein.

Contractor

Name
Title

Date

APPROVED AS TO FORM

Name
Title

City of San José

Name
Title

Date

EXHIBIT E
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

AGREEMENT TITLE:	
CONTRACTOR Name and Address:	

Pursuant to Section ____ of the Agreement referenced above, the City of San José hereby exercises its option to extend the term under the following provisions:

OPTION NO.	
------------	--

OPTION TERM

Begin date:	
End date:	

CHANGES IN RATE OF COMPENSATION

Percentage change in CPI upon which adjustment is based:	
--	--

Pursuant to Section ____ of the Agreement the Rates of Compensation are hereby adjusted as follows:

(use attachment if necessary)

MAXIMUM COMPENSATION for Option Term:	
---------------------------------------	--

For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the maximum compensation set forth above for Contractor’s services and reimbursable expenses, if any. The undersigned signing on behalf of the City of San José hereby certifies that an unexpended appropriation and funds are available for the option term specified above.

<p>CITY OF SAN JOSE a municipal corporation</p> <p>By _____ Name: _____ Title: _____ Date: _____</p>

EXHIBIT F-1 CONTRACTOR’S SOFTWARE LICENSE AGREEMENT

This Contractor’s Software License Agreement, (“License Agreement”) is Exhibit F-1 to the Agreement between the City of San José and Ubicquia, Inc. for a Smart Outdoor Light Management Solution (“Agreement”).

For purposes of this Exhibit F-1, the term “Licensee” shall have the same meaning as “City” as referenced in the Agreement.

For purposes of this Exhibit F-1, the term “Ubicquia” or “Licensor” shall have the same meaning as “Contractor” as referenced in the Agreement.

Each of City and Contractor are sometimes hereinafter referred to as a “Party” and collectively as the “Parties.”

For purposes of this Exhibit F-1, the term “Software” shall have the same meaning as “Solution” as referenced in the Agreement.

This License Agreement shall apply to, and only to, Licensee’s licensing and use of the Software and will control and take precedence over the Agreement with respect to the terms of use of the Software.

This License agreement (“**EULA**”) is by and between the City of San José (“**Licensee**”) and Ubicquia, Inc. (“**Ubicquia**” or “**Licensor**”) and governs Licensee’s Use of Ubicquia Software, including but not limited to, any Software that is embedded on any Ubicquia product (“**Product**”).

1 DEFINITIONS

- 1.1 “**Affiliate**” means any entity, now or hereafter existing, that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the subject entity. “Control,” for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interest in the subject entity.
- 1.2 “**Approved Source**” means: (i) Ubicquia or (ii) the Ubicquia authorized reseller, distributor, or systems integrator from whom Licensee acquired the Software.
- 1.3 “**Authorized Users**” means any individuals that Licensee authorize to Use the Software, including Licensee’s independent contractors or employees.
- 1.4 “**Confidential Information**” means any non-public information with respect to: (i) the Software, Documentation, Content, and any portions, components, or sub-files thereof; (ii) the structure, sequence, and organization of the Software and the concepts, methods of operations, and ideas disclosed therein; (iii) any trade secrets relating to the Software

and/or the Licensor Product; and (iv) any and all non-public technical and non-technical information disclosed by Licensor to Licensee pursuant to this EULA.

- 1.5 **“Content”** means the Software content, any of the Documentation, features and functionality including, without limitation to, all user interfaces, information, software, code, text, graphics, images, video, audio, and the design, selection, and arrangement thereof. Content shall expressly exclude Data as defined in the Agreement.
- 1.6 **“Documentation”** means printed, paper, electronic or online user or technical manuals, instructions, help files, training materials, specifications, or other documentation applicable to the Software and made available to Licensee by Licensor or an Approved Source for use with the Software, as may be updated from time to time by Licensor.
- 1.7 **“Intellectual Property Rights”** means any patents, patent rights, trademarks, service marks, registered designs, topography and semiconductor mask work rights, applications for, and renewals and extensions of any of the foregoing, copyrights, know-how, unregistered design rights, trade secrets, and any other similar protected rights in any country or otherwise associated jurisdiction.
- 1.8 **“Software”** means the Ubicquia computer programs, and any updates or upgrades made available to Licensee by Licensor or an Approved Source and licensed to Licensee by Licensor.
 - 1.8.1 **“Updates”** means all updates, bug fixes, error corrections, support and maintenance releases, or other modifications to the Software and backup copies thereof.
 - 1.8.2 **“Use” or “Using”** means to download, install, activate, access, provide data to, receive data from, or otherwise use the Software.

2 **OVERVIEW**

Licensee is fully responsible for any Authorized User’s compliance with this EULA. The Software may be subject to certain automatic Updates and Licensee hereby consents to such Updates. If Licensee does not agree to such Upgrades, Licensee is not permitted to Use the Software, and any permission Ubicquia may have previously granted to Licensee to Use the Software is revoked.

3 **LICENSE**

- 3.1 Subject to the terms of this EULA, payment of the applicable fees, and Licensee’s compliance at all times with the terms set forth in the EULA, Ubicquia grants Licensee, during the subscription term, worldwide, non-exclusive, non-transferable, and revocable limited license to Use the Documentation, Content, and Software in processor-executable code form only, solely in connection with the Product that Licensee owns or controls and solely for Licensee’s internal operations with respect to development of Licensee’s software to operate exclusively with Licensor’s Product(s) in accordance with the Documentation. Ubicquia licenses to Licensee the right to Use only the Software Licensee acquired from Ubicquia or an Approved Source. If the Software is licensed for a specified subscription term, Licensee’s license is valid solely for the applicable subscription term. Licensee’s right to Use the Software begins on the

date the Software is made available for Licensee's Use and continues until the end of the specified subscription term, unless otherwise terminated in accordance with this EULA.

4 LIMITATIONS ON USE

Licensee will not, directly or indirectly, allow a third party to do any of the following:

- 4.1 use Software that is licensed for a specific Product, whether physical or virtual, on another Product, without the express prior written consent of Ubicquia;
- 4.2 attempt to or actually license, sublicense, lease, rent, loan, sell, or otherwise distribute the Documentation, Software, or Content as a standalone product;
- 4.3 transfer, sublicense, or assign Licensee's rights under this license to any other person or entity (except as expressly provided herein), without the express prior written consent of Ubicquia;
- 4.4 modify, adapt, or create derivative works of the Software or Documentation without the express prior written consent of Ubicquia;
- 4.5 reverse engineer, decompile, translate, decrypt, disassemble, or otherwise attempt to: (i) derive any source code for the Software; or (ii) defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any software protection mechanisms in the Software, including without limitation, any such mechanism used to restrict or control the functionality of the Software;
- 4.6 make the functionality of the Software available to third parties, whether as an application service provider, or on a rental, service bureau, cloud service, hosted service, or other similar basis without the express prior written consent of Ubicquia;
- 4.7 remove, modify, or conceal any product identification, copyright, proprietary, or intellectual property notices or other marks on or within the Documentation, Software, or Content, or use them in contravention of any such applicable notices;
- 4.8 use the Software in violation of any third-party rights or any local, state, national, or international law, rule, or regulation;
- 4.9 violate the Documentation pertaining to any Software; or
- 4.10 release the results of any performance or functional evaluation of any of the Software to any third party without the express prior written consent of Ubicquia for each such release.

5 INTELLECTUAL PROPERTY OWNERSHIP

The Documentation, Content, and Software are licensed not sold, and the Documentation, Content, and Software are protected by the copyright and other intellectual property laws of the United States and other countries and by international treaty provisions. Ubicquia or its licensors retain ownership of all right, title, and interest, including all Intellectual Property Rights, in and to the Documentation, Content, and Software, including copies, improvements, enhancements, derivative works, and modifications thereof, regardless of form or media. Licensee do not have or receive any title or interest in or to the Documentation, Software, or Content, or the Intellectual Property Rights contained therein through Licensee's use of the Software or

otherwise unless such rights are expressly granted to Licensee in writing by Ubicquia. Licensee's rights to Use the Software are limited to those expressly granted by this EULA, and Ubicquia retains all rights not explicitly granted herein. Except for the express licenses provided herein, this EULA does not grant Licensee any rights under any of Licensor's patents, copyrights, trade secrets trademarks, or other Intellectual Property Rights. All trademarks, service marks, trade names, logos, and the goodwill associated therewith included or displayed in the Documentation, Software, or Content are the exclusive property of Ubicquia or their respective holders. Licensee is not permitted to use any of the trademarks, service marks, trade names, and logos without the applicable prior written consent of Ubicquia or such respective holders.

6 USE OF SOFTWARE BY AUTHORIZED USERS

Licensee may permit Licensee's Authorized Users to Use the Software licensed to Licensee under this EULA if such Use is solely: (i) on Licensee's behalf, (ii) for Licensee's internal operations, and (iii) in compliance with this EULA. Licensee agrees that Licensee is liable for any breach of this EULA by that Authorized User.

7 TERM AND TERMINATION

This EULA shall remain in full force and effect until termination of the Agreement or until the expiration of the applicable license or subscription term. Ubicquia will immediately terminate this EULA if: (i) Licensee fails to comply with any term of the EULA; (ii) if Licensee fails to pay any portion of the applicable license fees and Licensee fail to cure that payment breach within thirty (30) days of notice. The provisions that by their nature continue and survive will continue and survive any termination or expiration of this EULA

8 AUTOMATIC UPDATES AND UPGRADES, ADDITIONAL COPIES

From time to time, Ubicquia may, at its sole discretion, provide automatic Updates to the Software. Licensee hereby consents to any such automatic updates. If Licensee do not consent, Licensee's remedy is to stop using the Software. Notwithstanding any other provision of this EULA, Licensee is not permitted to Use Software enhancements or upgrades ("Upgrades") or Updates unless Licensee, at the time of acquiring such Update or Upgrade: (i) already hold a valid license to the original version of the Software, are in compliance with such license, and have paid the applicable fee, if any, for the Upgrade; (ii) limit Licensee's Use of Upgrades or copies to Use on devices Licensee owns or controls; and (iii) unless otherwise provided in the Documentation, make and Use additional copies solely for backup purposes, where backup is limited to archiving for restoration purposes.

9 LIMITED WARRANTY AND DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY

9.1 **Limited Warranty.** Ubicquia warrants that the Software will substantially conform to the applicable Documentation for ninety (90) days following the date the Software is made available to Licensee for Licensee's Use. This warranty does not apply if the Software, Ubicquia Product, or any other equipment upon which the Software is authorized to be used: (i) has been altered, except by Ubicquia or its authorized representative; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Ubicquia; (iii) has been subjected to abnormal

physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident; (iv) is licensed for beta, evaluation, testing, or demonstration purposes or other circumstances for which Ubicquia or the applicable Approved Source does not receive a payment of a purchase price or license fee; or (v) has not been provided by Ubicquia or an Approved Source. Ubicquia will use commercially reasonable efforts to deliver to Licensee Software free from any viruses, programs, or programming devices designed to modify, delete, damage, or disable the Software or Licensee's data.

- 9.2 **Exclusive Remedy.** At Ubicquia's option and expense, Ubicquia shall repair, replace, or cause the refund of the Software license fees paid for non-conforming Software. This remedy is conditioned on Licensee providing written notice of the non-conformance to Ubicquia or the applicable Approved Source within the warranty period. Ubicquia or the applicable Approved Source may request that Licensee return the Software, the Ubicquia Product, and/or Documentation as a condition of this remedy. This Section 12(b) is Licensee's exclusive remedy under the warranty.
- 9.3 EXCEPT AS EXPRESSLY SET FORTH ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UBICQUIA AND ITS LICENSORS PROVIDE DOCUMENTATION, CONTENT, AND SOFTWARE "AS IS" AND "AS AVAILABLE", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. UBICQUIA EXPRESSLY DISCLAIMS ALL WARRANTIES, CONDITIONS, OR OTHER TERMS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, WARRANTIES, REPRESENTATIONS, CONDITIONS, OR OTHER TERMS REGARDING ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, CONDITION, CAPACITY, PERFORMANCE, TITLE, AND NON-INFRINGEMENT. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SOFTWARE AND ITS FEATURES OR FUNCTIONALITY DOES NOT CONSTITUTE A WARRANTY OR REPRESENTATION. WITHOUT LIMITING THE FOREGOING, UBICQUIA DOES NOT WARRANT THAT THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS, OPERATE UNINTERRUPTED OR ERROR-FREE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA OR THAT ALL ERRORS WILL BE CORRECTED. IN ADDITION, UBICQUIA DOES NOT WARRANT THAT THE SOFTWARE OR ANY EQUIPMENT, SYSTEM, OR NETWORK ON WHICH THE SOFTWARE IS USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. NO AGENT OF LICENSEE IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF LICENSOR AS SET FORTH IN THIS EULA.
- 9.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, UBICQUIA'S AGGREGATE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES OR LOSSES ARISING FROM USE OF THE SOLUTION BY LICENSEE SHALL BE LIMITED TO TWO MILLION DOLLARS (\$2,000,000). THIS LIMITATION OF UBICQUIA'S LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, EXCEPT FOR CLAIMS ARISING FROM DEATH, BODILY INJURY, PROPERTY DAMAGE, OR INTELLECTUAL PROPERTY INFRINGEMENT.

10 CONFIDENTIALITY

Licensee shall not disclose to any third party, or use in any manner not expressly permitted herein, any Confidential Information. Licensee agrees to take all reasonable measures to protect Confidential Information and prevent unauthorized disclosure thereof, which measures shall be at least as stringent as those measures Licensee take to protect Licensee's own confidential information of like kind. Without in any way limiting the foregoing, Licensee shall restrict access to Confidential Information, including the Software, Content, and Documentation, to Licensee's employees and individual third party contractors who have executed a written agreement with Licensee sufficient to protect Confidential Information in accordance with the provisions of this EULA and who have a "need-to-know" to carry out Licensee's directed Use of the Documentation, Content, and Software. Notwithstanding the above, all Confidential Information, and any documents and other tangible objects containing or representing Confidential Information, and all copies thereof shall be and remain the property of Ubicquia. Nothing herein prohibits the Licensee from complying, in its sole discretion, with any applicable public records disclosure laws, including without limitation, the California Public Records Act (Cal. Govt. Code Section 62500 et seq.).

11 EXPORT RESTRICTIONS

The Software, Documentation, Content, and Confidential Information are subject to U.S. export control laws and regulations, and may be subject to export or import regulations in other countries. Licensee that Licensee will not export, re-export, or transfer the Software, Documentation, Content, or Confidential Information or any products developed with or utilizing the Software, Documentation, Content, or Confidential Information, in violation of any applicable laws or regulations of the United States or the country where the Software, Documentation, Content, or Confidential Information were obtained. Licensee is responsible for obtaining any licenses or authorizations required to export, re-export, transfer, or import the Software, Documentation, Content, or Confidential Information. In addition to the above, the Software, Documentation, Content, and Confidential Information may not, in the absence of authorization by U.S. and local law and regulations, as required, be used by or exported or re-exported to: (i) any U.S. sanctioned or embargoed country, or to nationals or residents of such countries; or (ii) any person, entity, organization or other party identified on the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons List, or the Department of State's Debarred Parties List, as published and revised from time to time; or (iii) any party engaged in nuclear, chemical/biological weapons, or missile proliferation activities. The Software may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

12 US GOVERNMENT END USERS

The Software and Documentation were developed at private expense and are "Commercial Items(s)" as defined in 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and

Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms herein. If Licensee are licensing the Software for acquisition by the U.S. Government or any contractor therefor, Licensee must license consistent with the policies set forth in 48 C.F.R. §§ 12.211 and 12.212 (for civilian agencies), and 48 C.F.R. §§227.7202-1, 227.7202- 3 and 252.227-7015 (for the Department of Defense), and their successors.

13 MISCELLANEOUS

- 13.1 Injunctive Relief. Licensee hereby acknowledges that Licensee's breach of this EULA may cause irreparable harm and significant injury to Ubicquia in an amount that may be difficult to ascertain and for which a remedy at law may be inadequate. Accordingly, Licensee acknowledges that, in addition to any other rights and remedies it may have, Ubicquia shall have the right to seek injunctive relief in any court of competent jurisdiction to enforce Licensee's obligations under this EULA.
- 13.2 Severability. In the event any provision of this EULA is found to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired unless such validity would frustrate the purpose of this EULA, and a valid, legal, and enforceable provision of similar intent and effect shall be substituted for such invalid, illegal or unenforceable provision.
- 13.3 Waiver. A waiver of any default hereunder or of any of the terms of this EULA shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but shall apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in this EULA shall be without prejudice to the right to exercise any other right or remedy provided by law or equity, except as expressly limited by this EULA.
- 13.4 English Language. The original of this EULA has been written in the English language, and the governing language of this EULA shall be English. Licensee hereby waive and agree not to assert any right to have this EULA written in the language of Licensee's place of residence, if other than English.
- 13.5 Binding. This EULA shall be binding on, and shall inure to, the benefit of the heirs, successors, and assigns of the parties hereto. No modification to this EULA is binding, unless in writing and signed by a duly authorized representative of each party.

EXHIBIT F-2 CONTRACTOR'S CLOUD SERVICES AGREEMENT

This Contractor's Cloud Services Agreement, ("Cloud Services Agreement") is Exhibit F-2 to the Agreement between the City of San José and Ubicquia, Inc. for a Smart Outdoor Light Management Solution ("Agreement").

For purposes of this Exhibit F-2, the term "Customer" shall have the same meaning as "City" as referenced in the Agreement.

For purposes of this Exhibit F-2, the term "Ubicquia" shall have the same meaning as "Contractor" as referenced in the Agreement.

Each of City and Contractor are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

For purposes of this Exhibit F-2, the terms "Services" or "Ubicquia Services" shall have the same meaning as "Solution" as referenced in the Agreement.

This Cloud Services Agreement shall apply to, and only to, Customer's licensing and use of the Services and will control and take precedence over the Agreement with respect to the terms of use of the Services.

This agreement, including all of the condition, restrictions, and requirements stated herein, which together form Ubicquia's Terms of Use ("**Terms**"), are entered into between Ubicquia, Inc. and its subsidiaries and affiliates ("**Ubicquia**") and the City of San José ("**Customer**"), including any individuals Customer authorize to access or use the Services, including Customer's independent contractors or employees ("**Authorized Users**"). Where the term "Customer," or "Customer's," is used in these Terms, it shall be deemed to include any "Authorized User" regardless of whether the term "Authorized User" is specifically referenced. These Terms contain the terms, restrictions, and conditions that govern Customer's access to and use of any Ubicquia Service for use in conjunction with Ubicquia's hardware products and for other services that Ubicquia provides.

1 DEFINITIONS

1.1 "**Affiliate**" means any entity, now or hereafter existing, that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the subject entity. "Control," for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interest in the subject entity.

1.2 "**Agreement**" means this Ubicquia Cloud Services Terms and Conditions MOA, the EULA, the Agreement between the City of San José and Ubicquia, Inc. for a Smart Outdoor Light Management Solution, and any other existing and in force agreement

between Customer and Ubicquia, and all applicable laws, rules and regulations applicable to Customer's use of the Services.

- 1.3 **“Content”** means all hardware, software, and data products provided by Ubicquia. For the avoidance of doubt, Content in this Agreement includes, but is not limited to, information, works, equipment, components, and materials, non-exhaustively including processor-executable software, databases, text, audio, images, video, and other machine-generated and machine-presentable information.
- 1.4 **“Documentation”** means electronic and non-electronic developer guides, getting started guides, user guides, quick reference guides, and other technical and operations manuals and specifications for the Services, as such documentation may be updated by Ubicquia from time to time.
- 1.5 **“Personal Data”** means any information that can be used to identify an individual, such as, but not limited to, an image, name, address, telephone number, and e-mail address.
- 1.6 **“Services”** or **“Ubicquia Services”** means Ubicquia's interactive web portal and the data input, data output, and data processing services provided through the web portal, application programming interfaces (APIs), platform services, Content, applications, support, and any other product or service provided by Ubicquia under these Terms.
- 1.7 **“Third Party Materials”** means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Ubicquia.
- 1.8 **“Units”** means the hardware products manufactured and sold by Ubicquia.
- 1.9 **“Customer's Data”** means all information, software, and other like data that Customer or anyone acting on Customer's behalf provides to Ubicquia for any purpose in connection with Customer's use of the Services. Customer's Data does not include Telemetry Data.

2 **SCOPE OF USE**

- 2.1 Customer may access and use in accordance with these Terms, the Services that Customer purchased, or are otherwise provided to Customer, by, through, or on behalf of Ubicquia. The software embedded in Ubicquia's products (and any updates thereto) is licensed and governed by Ubicquia's End User License Agreement (“EULA”). Customer may also need to install software or provide additional information to use certain Services. Customer may use such software to the extent reasonably required to use the Services but only for the subscription term during which Customer are entitled to use the Services. Such software is licensed to Customer under the EULA. Ubicquia reserves all rights to the Services, Content, hardware, and software not expressly granted under these Terms or the EULA.
- 2.2 Customer may access and use the Services only if Customer can form a binding contract with Ubicquia and only if Customer is in compliance with the Terms of this Agreement.

- 2.3 **Customer's Account.** Customer must have an account to access and manage Customer's use of the Services. Customer is responsible for Customer's account information and login credentials (which may include username, passwords, tokens, certificates, keys and pins) and all activities that occur under Customer's account, regardless of whether such activities are undertaken by Customer, Customer's Authorized Users, or a third party and, except to the extent caused by Ubicquia's breach of this Agreement, Ubicquia and its affiliates are not responsible for unauthorized access to Customer's account. Customer agrees to use reasonable measures to protect Customer's credentials and Customer agree to contact Ubicquia immediately if Customer suspect unauthorized use of Customer's account or if Customer's account information is lost or stolen.

3 **LIMITATIONS ON USE, ACCEPTABLE USE POLICY**

- 3.1 The Services and Content, including the features and functionality thereof, are protected by one or more of United States and international copyright, trademark, patent, trade secret, and other intellectual property or proprietary rights laws.
- 3.2 Neither Customer nor any End User may use the Services in any manner or for any purpose other than as expressly permitted by this Agreement. All rights granted to Customer in these Terms are conditioned on Customer's compliance with these Terms and will terminate if Customer do not comply with any term or condition of this Agreement.
- 3.3 Acceptable Use Policy ("**AUP**"). Use of any Ubicquia Services is subject to the following AUP. The AUP applies to anyone who uses the Services, including without limitation Customer, Customer's Authorized Users, the legal entity or individual doing business with Ubicquia, including resellers, and any third party permitted by resellers to use or access the Services ("**End Users**"). Customer are required to inform End Users of this AUP.
- 3.4 Customer, Customer's Authorized Users, and any End Users shall not directly or indirectly do any of the following or encourage, promote, permit, facilitate, or instruct others to:
- 3.4.1 Modify, alter, tamper with, repair, create derivative works of (except to the extent software included in the Services is provided to Customer under a separate license that expressly allows Customer to create derivative works), or reverse engineer, decompile, translate, disassemble or otherwise attempt to extract or generate source code of, any software included in the Services;
 - 3.4.2 Sell, resell, reframe, distribute, rent, or lease the Services, include the Services in an outsourced or service bureau offering, or otherwise commercialize the Services;
 - 3.4.3 Use the Services for any illegal, harmful, or offensive use, or to transmit, store, display, host, distribute, or otherwise make available content that is or may be deemed harmful, offensive, hateful, defamatory, obscene, abusive, invasive of privacy, or otherwise objectionable;

- 3.4.4 Commit or encourage fraudulent or other illegal activities in violation of any applicable law, regulation, government order or decree, legal agreement, or Ubicquia published policies or specifications;
- 3.4.5 Use the Services as a sole source of, primary source of, or final confirmation of information that protects the life, limb, or property of any third party. For the avoidance of doubt, the information of this provision 3.4.5 includes, but is not limited to, measures or indication of time, temperature, location, pressure, voltage, current, power, lightening, plasma, humidity, moisture, water level, gas (*e.g.*, carbon monoxide, carbon dioxide, methane, natural gas), particulate matter (*e.g.*, pollution), or any other such parameter; and a non-exhaustive, non-limiting exemplary list of such information includes a presence or absence of stray voltage, a measure of stray voltage, an indication of a luminaire's illumination state, a measure of pressure or indication of over- or under-pressure in a pressurized vessel (*e.g.*, a distribution transformer), a temperature reading or temperature threshold indication, a measure or indication of tilt, or the like);
- 3.4.6 Infringe or misappropriate any copyright, trademark, or other intellectual property or proprietary rights of others;
- 3.4.7 Transmit any material that may damage, interfere with, surreptitiously intercept, or expropriate any system, program, or data, including adware, malware, spyware, software viruses, or any other computer code, files or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
- 3.4.8 Work around any technical limitations in the Services that only allow Customer or Customer's End Users to use the Services in certain ways;
- 3.4.9 Download or otherwise remove copies of software, including source code and executable code, from the Services unless explicitly authorized;
- 3.4.10 Interfere with, disrupt, or attempt to gain unauthorized access to the Services or servers or networks connected to the Services, or disobey any requirements, procedures, policies, or regulations of networks connected to the Services;
- 3.4.11 Remove, circumvent, disable, damage, or otherwise interfere with security-related features of the Services;
- 3.4.12 Access or probe any network, computer or communications system, software application, or network or computing device without authorization, including but not limited to breaches, vulnerability scans, or penetration testing; or
- 3.4.13 Violate any applicable law or regulation or accompanying user or technical manuals, training materials, specifications, or other Documentation pertaining to any Services, whether in digital or printed format.
- 3.4.14 Ubicquia reserves the right, but does not assume the obligation, to monitor and investigate any violation of the AUP or any misuse of the Services by Customer, Customer's Authorized Users, or any third party. Failure to comply with or breach of the AUP may result in warnings, suspending, restricting, or terminating access to the Services, removing or disabling access to any content

or resource that violates the AUP, legal proceedings, and any other action Ubicquia reasonably deems appropriate. Customer agrees to indemnify, defend, and hold Ubicquia harmless for any claims, liability, demands, damages, and costs (including attorneys' fees) arising from violations of the AUP by Customer or Customer's End Users.

3.5 Customer is responsible for obtaining and maintaining all equipment and services needed for access to, and use of, the Services and for paying all charges related thereto.

4 **FEES**

4.1 Customer is responsible for paying all fees for the Services as specified in the Agreement between Customer and Ubicquia. Customer will pay all sales, value-added, general standard and similar taxes, levies, duty, or charges imposed by any government authority related to the Services purchased. If Customer's payment is thirty (30) or more days overdue, Ubicquia may, in its sole discretion after providing Customer at least ten (10) days prior notice, and without limiting Ubicquia's other rights and remedies, suspend or terminate the Services until such amounts are paid in full. In the event Customer dispute an invoice, Customer must notify Ubicquia in writing of such dispute within thirty (30) days of the invoice date. Ubicquia will not suspend Services if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. Customer agrees that Customer's purchase of the Services is not contingent on the delivery of any future functionality or features.

4.2 The applicable agreement between Customer and Ubicquia may govern the acceptable forms of payment for the Services Customer or Customer's End Users receive. For example, and not limitation, Services may be invoiced, billed, collected, or otherwise made due and paid for electronically, via one or more invoices, via a third-party credit source, via a purchase order, via a financial institution electronic withdrawal, via a wire payment, and the like.

4.3 In the event Ubicquia authorizes one or more third parties to offer services through Ubicquia's Services, then Ubicquia may facilitate payment of such third-party services, if any, through the Services provided by Ubicquia.

5 **OUR RESPONSIBILITIES**

5.1 **Availability of Purchased Services.** Ubicquia will provide Customer the Services specified in the Agreement. Ubicquia will use commercially reasonable efforts to make the purchased Services available 24 hours a day, 7 days a week, except for: (i) scheduled downtime; (ii) any unavailability caused by circumstances beyond Ubicquia's reasonable control, including, but not limited to, an act of God, act of government, pestilence, flood, fire, storms, earthquake or other elements of nature, systemic electrical, telecommunications or other utility failures, civil unrest, act of terror, strike or other labor problem ("Force Majeure Event"), issues with network connectivity, or Internet service provider failure or delay; (iii) any other circumstances beyond Ubicquia's reasonable control, including Customer's use of Third Party Materials, misuse of the Services, or use of the Services other than in compliance with the express Terms of this Agreement; and (iv) any permitted suspension or termination of the Services pursuant to these Terms.

5.2 **Support Services.** Ubicquia provides basic support with the Services and offers higher levels of support for an additional fee.

6 **CUSTOMER'S OBLIGATIONS**

- 6.1 Customer are responsible for: (i) complying with the AUP as described in Section 3.3; (ii) Customer's account security pursuant to Section 2 and using reasonable efforts to prevent unauthorized access to or use of the Services and Content; (iii) Customer's Authorized Users' compliance with these Terms; (iv) the accuracy, completeness, and legality of Customer's Data, the means by which Customer's Data was acquired by Customer, and the use of Customer's Data with Ubicquia Services; and (v) the technical operation of Customer's Data, including ensuring that calls Customer make to the Services are compatible with Ubicquia's current APIs for that Service.
- 6.2 Customer shall use the Services and Content only in accordance with these Terms, Ubicquia's Documentation, the Agreement between Customer and Ubicquia, and all applicable laws, rules, and regulations.
- 6.3 Customer shall comply with the terms of service of third-party applications (including Customer's applications) with which Customer access or use the Services or Content.
- 6.4 The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. Customer is responsible for taking Customer's own measures to maintain appropriate security, protection, and back up of Customer's Data and Data of Customer's End Users and others to whom Customer owe such a duty.

7 **BETA AND FREE SERVICES**

- 7.1 **Beta Services.** From time to time, Ubicquia may offer Customer access to certain beta, test, or evaluation Services ("**Beta Services**") at no charge, unless otherwise specified by Ubicquia. Beta Services are intended for evaluation purposes and not for production or commercial use, are unsupported, and may contain errors, bugs, or other issues. Customer may choose to try such Beta Services in Customer's sole discretion, and Customer accept the Beta Services "AS-IS" and AT CUSTOMER'S OWN RISK. Ubicquia is not responsible for any issues related to Customer's use of the Beta Services. Ubicquia may discontinue, limit, suspend, or terminate Customer's access to any portion of the Beta services at any time and for any reason, in its sole discretion. Ubicquia will have no liability for any harm or damage arising out of or in connection with any Beta Services.
- 7.2 **Free Services.** Ubicquia may offer Customer access to certain Services free of charge ("**Free Services**"). The Free Services are provided "AS-IS" without support or any warranty of any kind. Ubicquia shall have no indemnification obligations with respect to any Free Services.

8 **CHANGES**

- 8.1 **Services.** Ubicquia may add, enhance, change, or remove features or functionality of the Services from time to time provided such change does not materially reduce the core functionality of the Services.

- 8.2 **Material Change to Services.** In the event a change by Ubicquia does materially reduce the core functionality of the Services and does have a materially adverse effect on Customer's use of the Services, Customer shall notify Ubicquia in writing, and Ubicquia shall attempt to provide a reasonably satisfactory work-around. In the event Customer are not satisfied with such work-around or a work-around is not possible, then Customer may terminate Customer's Services upon written notice to Ubicquia, and in such case, subject to this Agreement, Customer may be entitled to receive a pro-rated refund of any fees or other consideration paid in advance or otherwise exchanged for the terminated Services.
- 8.3 **Automatic Updates.** Ubicquia may, from time to time and at its sole option, provide patches, bug fixes, corrections, updates, upgrades, support and maintenance releases, or other modifications to the Services, which items shall be deemed part of the Services.

CUSTOMER HEREBY CONSENT TO ANY SUCH AUTOMATIC UPDATES.

If Customer do not consent, Customer's remedy is to terminate Customer's account and stop using the Services.

- 8.4 **APIs.** From time to time, Ubicquia may change or discontinue one or more APIs utilized for the Services. In such cases, Ubicquia shall use reasonable efforts to continue to support the previous version of any changed or discontinued API for a period of one (1) year from the date of the change or discontinuation, unless the continued support of the previous version would reasonably be expected to: (i) pose a security risk or intellectual property rights issue; (ii) be commercially unfeasible (whether economically or technically); or (c) is impossible or impractical as a result of a legal requirement. No changes or discontinuations shall prevent Ubicquia from meeting the specifications and requirements as described in Exhibit A – 1 through A – 4.

9 **THIRD PARTY MATERIALS**

- 9.1 Third Party Materials offered to Customer by a third party in conjunction with the Services, and any exchange of data between Customer and such third party, is solely between Customer and the applicable third party, even if such Third Party Materials are provided by use of, or through, the Services. Customer's use of such Third Party Materials shall be subject to a separate agreement directly between Customer and the Third Party Materials provider for the provision of the Third Party Materials. The Third Party Materials provider is solely responsible for the Third Party Materials.
- 9.2 FOR THE AVOIDANCE OF DOUBT, UBICQUIA PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THIRD PARTY MATERIALS, INCLUDING WITH RESPECT TO FUNCTIONALITY OF SUCH THIRD PARTY MATERIALS WITH ANY UBICQUIA PRODUCT OR SERVICE. Ubicquia does not provide any warranty, maintenance, technical, or other support for any Third Party Materials or its use on any Ubicquia product or Service. Accordingly, Ubicquia shall have no obligation or liability arising from such Third Party Materials.

10 PRIVACY AND DATA PROTECTION

10.1 Ubicquia may collect certain information generated by instrumentation and logging systems created through the use and operation of Ubicquia's products and Services ("**Telemetry Data**") related to Customer use of the Services in order to improve, maintain, or analyze the Services. Customer acknowledges and agrees that Ubicquia shall be permitted to use such data without restriction to the extent such data is non-personal data that does not identify Customer or Customer's End Users.

11 PROPRIETARY RIGHTS AND OWNERSHIP

11.1 **Service Data.** Customer agrees that Ubicquia and its Affiliates may use information derived from or generated by the Services to provide, maintain, protect, and improve the Services and to develop new products and services, to the extent permitted by applicable law.

11.2 **Ubicquia Materials.** Ubicquia and its Affiliates or licensors own and reserve all right, title, and interest in and to the Services and Content, the underlying technology, the software, and Documentation, including all related intellectual property rights. Such ownership extends to all copies and portions of the foregoing, and all improvements, enhancements, modifications, and derivative works. Customer may use the Services and Content solely as part of the Services for Customer's internal business operations subject to these Terms and Customer's permitted use of the Services. No rights are granted to Customer hereunder, including any intellectual property rights, other than as expressly set forth herein and with respect to the software, in the EULA. Some Content may be provided to Customer under a separate license, including an open source software license. Customer's use of such software is subject in all cases to the applicable license from such software provider, which shall prevail with respect to that Content.

11.3 **Feedback.** If Customer or any of Customer's End Users, sends or transmits to Ubicquia any feedback, communications, or other such materials by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Ubicquia is free to use such Feedback irrespective of any other obligation or limitation between Customer and Ubicquia. All Feedback is, and will be treated as, non-confidential. Customer agree to assign, and hereby do assign, to Ubicquia and its Affiliates, and Customer shall cause Customer's End Users to assign, all right, title and interest in the Feedback, and to the extent such assignment is not permitted under applicable law, Customer hereby grant to Ubicquia a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Ubicquia's or its Affiliates' Services, any Feedback provided by Customer or Customer's End Users, and Ubicquia shall be entitled to use such Feedback without any restriction, for any purpose whatsoever and without any obligation of any payment of any fees.

12 DISCLAIMER OF WARRANTIES.

THE CONTENT AND SERVICES ARE PROVIDED "AS IS," AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. NEITHER UBICQUIA, ITS AFFILIATES,

SUPPLIERS, OR LICENSORS MAKE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND TO CUSTOMER OR ANY OTHER PARTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO ANY SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, ACCURACY, NON- INFRINGEMENT, OR SYSTEM INTEGRATION. ANY STATEMENTS OR REPRESENTATIONS ABOUT THE SERVICES AND ITS FEATURES OR FUNCTIONALITY, AND ANY COMMUNICATION WITH CUSTOMER, IS FOR INFORMATION PURPOSES ONLY, AND DOES NOT CONSTITUTE A WARRANTY OR REPRESENTATION. WITHOUT LIMITING THE FOREGOING, UBICQUIA MAKES NO REPRESENTATION OR WARRANTY THAT THE SERVICES WILL: (I) MEET CUSTOMER'S REQUIREMENTS; (II) BE UNINTERRUPTED, ERROR-FREE, ACCURATE, RELIABLE, OR COMPLETE; (III) BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE NOT EXPLICITLY SPECIFIED IN THE DOCUMENTATION; OR (IV) THAT UBICQUIA OR ANY THIRD PARTY WILL RESOLVE ANY PARTICULAR SUPPORT REQUEST OR FIX ANY ERRORS OR THAT SUCH RESOLUTION WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS. TO REMOVE ALL REMAINING DOUBT, IF ANY, THIS SECTION XIII APPLIES, *INTER ALIA*, TO ALL APPLICABLE SERVICES DESCRIBED IN SECTION III.D.

13 **LIMITATION OF LIABILITIES**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, UBICQUIA'S AGGREGATE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES OR LOSSES ARISING FROM USE OF THE SOLUTION BY LICENSEE SHALL BE LIMITED TO TWO MILLION DOLLARS (\$2,000,000). THIS LIMITATION OF UBICQUIA'S LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE, EXCEPT FOR CLAIMS ARISING FROM DEATH, BODILY INJURY, PROPERTY DAMAGE, OR INTELLECTUAL PROPERTY INFRINGEMENT.

14 **TERMINATION AND SUSPENSION**

14.1 Suspension. Without limiting other remedies, Ubicquia may suspend Customer's and any of Customer's End Users' right to access or use all or a part of the Services immediately upon notice to Customer if Ubicquia determines, in its sole discretion, that:

14.1.1 Customer or an End User of Yours has violated these Terms or the AUP;

14.1.2 Customer have engaged in any conduct that is in violation of any applicable law or regulation; or

14.1.3 provision of the Services is rendered impossible or impractical as a result of a legal requirement or judicial order.

14.2 **Ubicquia's Data Upon Termination.** Upon termination of these Terms, Customer will return to Ubicquia all Content, if any, and all other items in Customer's possession or control, if any, that are proprietary to Ubicquia. The provisions that by their nature

continue and survive will continue and survive any termination or expiration of these Terms.

15 **GENERAL PROVISIONS**

- 15.1 **Import and Export Compliance.** In connection with these Terms, each party will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Customer are solely responsible for compliance related to the manner in which Customer choose to use the Services, including Customer's transfer and processing of Customer's Data, the provision of Customer's Data to Customer's End Users, and the region in which any of the foregoing occur.
- 15.2 **U.S. Government Rights.** The Services are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services. If Customer are using the Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue Customer's use of the Services. The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.
- 15.3 **No Third-Party Beneficiaries.** This Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to these Terms.
- 15.4 **No Waivers.** The failure by Ubicquia to enforce any provision of these Terms will not constitute a present or future waiver of such provision nor limit our right to enforce such provision at a later time. All waivers by Ubicquia must be in writing to be effective.
- 15.5 **Severability.** If any portion of these Terms is held to be invalid or unenforceable, the remaining portions of these Terms will remain in full force and effect. Any invalid or unenforceable portions will be interpreted to effect the intent of the original portion. If such construction is not possible, the invalid or unenforceable portion will be severed from these Terms, and the rest of the Terms will remain in full force and effect.
- 15.6 **Binding.** These Terms shall be binding on, and shall inure to, the benefit of the heirs, successors, and assigns of the parties hereto. No modification to these Terms is binding, unless in writing and signed by a duly authorized representative of Ubicquia.

EXHIBIT G -1

INFORMATION TECHNOLOGY AND SECURITY REQUIREMENTS

The requirements below define the City's Information Technology and Security Requirements as they pertain to this Agreement. Contractor shall comply with the following requirements in providing all Information Technology-related software, services, and equipment.

1 Contractor's Software

The terms for Contractor's Software licenses, including software accessed through a subscription service (Software), delivered pursuant to Exhibit A-1 Scope of Services, including subsequent Software updates licensed to the City, shall be as set forth in Exhibit F-1, Contractor's Software License Agreement and Exhibit F-2 Contractor's Cloud Services Agreement.

2 Non-Contractor Software

Contractor may procure, on City's behalf, the third-party software pursuant to and in accordance with the license and maintenance agreements Exhibit F-1, Contractor's Software License Agreement and Exhibit F-2 Contractor's Cloud Services Agreement. Contractor shall serve as City's agent for purposes of obtaining and implementing the items and services contemplated by such agreements. In procuring the third-party license and maintenance service, Contractor shall ensure the following:

- The license and service include guarantees and warranties;
- The City is either the direct or third party beneficiary to the guarantees and warranties of the agreement(s);
- The license and service include option(s) to purchase a warranty for a longer period if commercially available, and that the City may exercise the option(s);

3 Privacy and Disclosure

Contractor agrees in the performance of services to comply with City's Privacy and Disclosure Policy, Exhibit G-2. Contractor shall ensure that all webpages that it creates are consistent with the Policy. Contractor further agrees that it shall treat all information received through the performance of this Agreement in strict accordance with the Policy.

Personal identifying information, financial account information, and restricted City information, whether in electronic format or hard copy, must be secured and protected at all times to prevent unauthorized access. At a minimum, Contractor shall encrypt and password-protect electronic files, store and process City data only in North America, and adhere to any applicable security standards, including the National Institute for Standards and Technology CSF/800-14/800-53/800-82, International Organization for Standardization 15408/27001/27002, International Society for Automation ISA-62443 series, Payment Card Industry PCI-DSS, Underwriters Laboratory, Health Insurance Portability and Accountability Act, Federal Risk and Authorization Management Program FedRAMP, U.S. Department of Justice/Federal Bureau of Investigation Criminal Justice Information Services Security Policy, et al., as may be amended or updated. This includes data saved to host locations, computers, connected devices, and storage devices.

4 Warranty for Services and Software Customizations

Contractor warrants to City that Contractor shall render all Services and software customizations provided under this Agreement with reasonable care and skill and warrants that they will function per the approved business requirements and design under ordinary use and operation in conformance with the specifications and documentation. Additionally, Contractor shall warrant its Services and software customizations for a period of one (1) year after Final System Acceptance Exhibit A - 4 Final Acceptance Certificate (“Warranty Period”). During the Warranty Period, City will notify Contractor if any Services or software customizations do not conform to City’s specifications as contained in Exhibit A - 1 Scope of Services. Upon receipt of such notice, Contractor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Contractor shall (at no additional cost to the City) repair the defective Services or software customizations. The one (1) Warranty Period is reset for any repaired or replaced item(s), beginning upon City acceptance of the repaired or replaced item(s). If despite its reasonable efforts, Contractor is unable to provide the City with Services or software customizations in compliance with the foregoing warranty, City may pursue its remedy at law to recover direct damages resulting from the breach of this warranty.

5 Warranty for Software

Unless otherwise stated in the Software License Agreement Exhibit F-1, Contractor’s Software License Agreement and Exhibit F-2 Contractor’s Cloud Services Agreement., Contractor warrants the Contractor Software for one (1) year from the date of Final System Acceptance in accordance with the terms of the Software License Agreement and the provisions of Section 5.

6 Operability

Contractor warrants that the Software and any customizations will be delivered to the City malware free and does not contain any timers, counters, or preprogrammed devices that will cause the Software to become erased, inoperable, or incapable of processing in the manner as documented in Exhibits A - 1 and A - 2.

7 Upgrades

Contractor agrees to maintain the Software to operate on all compatible upgrades of the Hardware product line and operating systems used by City and specified in the Software License Agreement.

8 New Media

To the extent applicable, media upon which any Software or software customizations are delivered to City by Contractor:

- 8.1 Shall be new and free from defects in manufacture and materials;
- 8.2 Shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties;
- 8.3 Shall, during the Warranty Period, function properly under ordinary use and operate in conformance with the specifications; and

8.4 In the event that media on which any software application, customer software, or third party application software is delivered is defective and cannot be read or utilized for its intended purpose by Contractor supplied or approved equipment, Contractor shall replace the defective media as soon as possible. Any delays occasioned by the failure of new media shall not be considered excusable delay.

9 **Confidential Information**

9.1 Confidentiality

All data and information generated, collected, developed, discovered, or otherwise saved in the System exclusively for the City (collectively the “Data”) by the Contractor in the performance of this Agreement are confidential and must not be disclosed to any person except as authorized by City or as required by law.

9.2 Ownership of Materials

City and Contractor agree that Contractor shall own the entire right, title, and interest, including patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information, and data solely conceived or developed by Contractor in the performance of the project, and developed using Contractor’s facilities or personnel. City and Contractor agree that City shall own the entire right, title, and interest, including all patents, copyrights, and other intellectual property rights, in and to all tangible materials, inventions, works of authorship, software, information, and data solely conceived or developed by City’s facilities or personnel. Technology that is jointly developed using both City and Contractor personnel and facilities shall be jointly owned

9.3 Ownership of Data

The City shall maintain ownership and control of the Data throughout the Agreement period and in perpetuity. Contractor shall have the right to use the Data solely to perform Services under this Agreement with the City. Contractor may not use the Data, a subset of the Data, and/or a summary of the Data, or, cause or permit the Data, a subset and/or a summary thereof, to be used by any third party, outside the Scope of this Agreement without the express written consent of the City. Contractor shall provide City with a copy of the Data in a mutually agreed upon format at regular intervals and at such additional times as the City deems appropriate. Contractor warrants that throughout all operational and maintenance activities the accuracy of the Data will be preserved.

9.4 Security

Contractor shall maintain effective controls and security to protect the Data, including conducting daily and incremental backups to a redundant data storage location, providing redundant power, internet, site redundancy, and emergency recovery procedures.

9.5 Copies of Data/Exit Strategy

Upon request of the City or in the event this Agreement is terminated, Contractor shall work with the City to ensure a smooth transition of all Data to the City’s new

environment, including, but not limited to, providing the City with reasonable support materials, and sufficient time to effect the transition. Additionally, upon request by the City and at no additional cost, Contractor shall provide City with a database export of the Data in a format acceptable to the City. At the termination of this Agreement, all Data at the Contractor's (or Contractor's subcontractor's) facilities shall be purged when the City confirms that it has received a satisfactory copy of the Data. Contractor shall provide written verification to the City once all City Data has been purged.

9.6 Enforcement

The City and Contractor agree that damages are not adequate and no adequate remedy at law exists for any threatened or actual disclosure or use of information by Contractor in violation of the provisions of this Agreement. Accordingly, Contractor consents to the entry of an injunction against threatened or actual disclosure or use of the information in violation of any provision of this Agreement.

10 **Security Requirements**

10.1 Privileged Information

Contractor shall provide any and all information systems security findings and recommendations under privileged access, or a similar level of protection, in order to guard against revealing potential security issues that put the City, citizens, and businesses at risk.

10.2 Secure Transmission

Contractor shall provide any and all information systems security findings, recommendations, and work materials via a secure file transfer method accessible by the City.

10.3 Secure Access

Contractor shall have all equipment, materials, and support necessary to remotely connect to the City servers and computers via a secure connection per City access protocols. The City will provide secure VPN access into the network to the Contractor as required. On-site access will also be provided as needed and as mutually agreed by the parties.

10.4 Security Policy and Standards

Contractor shall adhere to the City's *Information and System Security Policy* and *Information Security Standard Handbook* or any other similar standard such as NIST SP800-53, ISO 27005, CIS, or COBIT, to the extent such are applicable to Contractor in providing the services.

10.5 Security Controls

Contractor shall implement security controls in accordance with the City's Security Policy and Standards or any other acceptable standard to assess any solution prior to first release or release of any major improvement or enhancement. Contractor's solution must be audited by a third party at least once a year and results shall be share with City along with regular updates on risk mitigation.

10.6 All City Data provided to Contractor for the performance of the services specified herein is owned by the City and must be returned to the City upon contract termination.

10.7 Limited Access

If necessary for the fulfillment of the Agreement, City may provide Contractor with non-exclusive, limited access to the City's information technology infrastructure. Contractor shall abide by all City policies, standards, regulations, and restrictions regarding access and usage of City's information and communication technology resources. Contractor shall enforce all such policies, standards, regulations, and restrictions with all Contractor's employees, agents, and any tier of subcontractor granted access in the performance of this Agreement and shall only grant such access as may be necessary for the purpose of fulfilling the requirements of this Agreement.

10.8 Compromised Security

In the event that Data collected or obtained by the Contractor in connection with this Agreement is believed to have been compromised, Contractor shall notify the City immediately. Contractor agrees to reimburse the City for any actual, out-of-pocket costs it incurs to resolve potential breaches incurred due to the Contractor's action or inaction, including, where applicable, the cost of assisting individuals who may be impacted by the Solution.

10.9 Incident Response

Contractor shall develop and maintain an Incident Response plan for providing notification, containing, eradicating, and recovering from a significant incident that impacts the operations of the solution.

10.10 Contingency Planning

Contractor shall develop and maintain a Contingency Plan for providing resiliency and redundancy to the solution.

EXHIBIT G-2

PRIVACY AND DISCLOSURE POLICY

The purpose of this statement is to define the City of San José's policy with regard to the collection and use of personally identifiable information (PII). PII is any information relating to an identified or identifiable individual who is the subject of the information. Users of City systems should be informed of the following:

The City of San José collects two kinds of customer information: (1) anonymous and (2) personally identifiable information (PII).

1 Anonymous Information

This type of information does not identify specific individuals and is automatically transmitted. This information consists of:

- The URL (Uniform Resource Locator or address) of the web page user previously visited.
- The domain names and/or IP addresses which are numbers that are automatically assigned to City computers whenever users are connected to the Internet or World Wide Web.
- The browser version users are using to access the site.

This information is used to help improve the City's systems. None of the information can be linked to an individual.

2 Personally Identifiable Information (PII)

This type of information could include name, address, email address, telephone number, or credit/debit card information. The City will make every reasonable effort to protect City privacy. It restricts access to City personal identifiable information to those employees who will respond to City request. The City does not intentionally disclose any personal information about Contractor customers to any third parties or outside the City except as required by law or by the consent of the person providing the information.

The City only collects personally identifiable information that is required to provide service. User can decline to provide us with any personal information. However, if user should choose to withhold requested information, the City may not be able to provide user with the online services dependent upon the collection of that information.

3 Access to Personally Identifiable Information

Access to personally identifiable information in public records at local levels of government in San José is controlled primarily by the California Public Records Act (Government Code Section 6250, et. seq.). Information that is generally available under the Public Records Act may be posted for electronic access through the City's Web Site. While the Public Records Act sets the general policies for access to City records, other sections of the California code as well as federal laws also deal with confidentiality issues.

4 Email addresses

Email addresses obtained by the City will not be sold or given to other private companies for marketing purposes. The information collected is subject to the access and confidentiality provisions of the Public Records Act, other applicable sections of the California code as well as Federal laws. Email or other information requests sent to the City may be maintained in order to respond to the request, forward that request to the appropriate City within the City, communicate updates to the City page that may be of interest to citizens, or to provide the City staff with valuable customer feedback to assist in improving the site. Individuals can cancel any communications regarding new service updates at any time.

5 Use of “Cookies”

Some City applications use “cookies”. A cookie is a small data file that certain web sites write to City hard drive when user visit them. A cookie file can contain information such as a user id that the site uses to track the pages user have visited. But the only personal information a cookie can contain is information supplied by user. A cookie is only a text file and cannot read data off user’s hard disk or read cookie files created by other sites. Cookies can track user traffic patterns, recognize users computer’s browser when user return, and could provide personalized content without requiring sign-in.

User can refuse cookies by turning them off in user browser. However, they may be required to use some of the web applications on the City’s Web Site.

6 Security

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by City’s systems and has taken reasonable precautions to protect such information from loss, misuse, or alteration.

7 Contractual Services for the City’s SYSTEMS

To ensure that contractors who have access to or provide contractual services for the City are not allowed to re-sell or in any way share or convey to another party or use it for another purpose any information that they may have access to in the course of doing business for the City; all City contracts regarding such services should contain a requirement that the Contractor must comply with the City’s IT and Security Policies, to include PII and any other sensitive data.

8 Electronic Signatures and Payments

The City of San José is committed to data security and the data quality of personally identifiable information that is either available from or collected by Contractor web site and has taken reasonable precautions to protect such information from loss, misuse, or alteration. When a City application accepts credit cards or any other particularly sensitive information for any of its services, it encrypts all ordering information, such as the customer's name and credit card number, in order to protect its confidentiality.

9 **Disclaimer**

City systems should contain a disclaimer substantially containing the following information:

9.1 The City of San José is neither responsible nor liable for any delays, inaccuracies, errors, or omissions arising out of user's use of City systems or with respect to the material contained, including without limitation, any material posted on the Site nor for any viruses or other contamination of user's system. City systems and all materials contained on it are distributed and transmitted "as is" without warranties of any kind, either express or implied, including without limitations, warranties of title or implied warranties of merchantability or fitness for a particular purpose. The City of San José is not responsible for any special, indirect, incidental, or consequential damages that may arise from the use of, or the inability to use, the City systems and/or the materials contained on the City systems whether the materials contained on the City systems are provided by the City of San José or a third party. The City of San José is neither responsible nor liable for any viruses or other contamination of user's system.

9.2 Access to Information

Unless otherwise prohibited by state or federal law, rule or regulation, user will be granted the ability to access and correct any personally identifiable information. The City will take reasonable steps to verify user's identity before granting such access. Each City service that collects personally identifiable information will allow or review and update of that information.

9.3 Non-City Systems

Non-City systems may be linked through City systems. Many Non-City systems may or may not be subject to the Public Records Act and may or may not be subject to other sections of the California code or federal law. Visitors to such sites are advised to check the privacy statements of such sites and to be cautious about providing personally identifiable information without a clear understanding of how the information will be used.

9.4 The City is not responsible for, and accepts no liability for, the availability of these outside resources. Linked systems are not under the control of, nor maintained by, the City, and the City is not responsible for the content of these systems, which can and do change frequently. In addition, inclusion of the linked systems does not constitute an endorsement or promotion by the City of any persons or organizations sponsoring the linked systems.

- FOR YOUR ELECTRONIC SIGNATURE
 FULLY EXECUTED COPY TO FOLLOW

CITY STAFF: Ryan Maher

EMAIL: ryan.maher@sanjoseca.gov

SCANNED SIGNATURE AUTHORIZATION

DATE: April 12, 2022

TOTAL PAGES:
(INCLUDING THIS PAGE) 76

To: Ian Aaron

To: Stephen Patak

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I agree to use electronic signatures

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BY: 

BY: 

DIRECTIONS:

REVIEW THE ENCLOSED DOCUMENT, IF IT IS ACCEPTABLE:

1. SIGN THE DOCUMENT **IN BLUE INK**
2. CHECK THE BOX BELOW YOUR NAME AND SIGN AGREEING TO THE USE OF ELECTRONIC SIGNATURES
3. SCAN YOUR EXECUTED DOCUMENT TOGETHER WITH THIS COVER PAGE **IN COLOR**
4. EMAIL THE ENTIRE DOCUMENT TO RYAN MAHER AT RYAN.MAHER@SANJOSECA.GOV.

To BE COMPLETED BY CITY STAFF:

ALTERNATIVE METHODS OF VERIFICATION:

- USE OF A PASSWORD PROTECTED WEBSITE
 CONFIRMED BY A KNOWN TELEPHONE NUMBER AND/OR EMAIL ADDRESS
 PERSONALLY KNOWN TO CITY STAFF