

**AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
SINWAVES, INC. DBA LYT
FOR CENTRALIZED TRANSIT SIGNAL PRIORITY SOLUTION**

This Agreement is entered into as of the City’s execution date (“Effective Date”) between the City of San José, a municipal corporation (“City”), and SinWaves, Inc. dba LYT, 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 Centralized Transit Signal Priority solution (the “Solution” or the “Software”) and professional services, including implementation, verification testing, 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 and Services in response to the RFP; and

WHEREAS, Contractor warrants that the proposed Solution and Services 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 - Centralized Transit Signal Priority Locations
- A-3 - Project Bus Routes Map
- A-4 - Preliminary Project Implementation Schedule
- A-5 - Final Solution Acceptance Certificate
- EXHIBIT B - Compensation
- EXHIBIT C - Insurance Requirements
- EXHIBIT D - Change Order Form
- EXHIBIT E - Contractor End User License Agreement
- E-1 Contractor Software Maintenance Agreement
- EXHIBIT F - Information Technology and Security Requirements

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. 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 August 9, 2027 (“Initial Term”), inclusive, subject to the provisions of Section 14 TERMINATION.

2.2 No Waiver

Any agreement by City 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-4 and the ability of the Parties to provide and 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 other force majeure. 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.

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 Exhibits E and E-1 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 and Maintenance

The terms for the licensing of the Software, including subsequent releases licensed to the City, shall be as set forth in the Contractor End User License Agreement (Exhibit E). The terms for the provision of Contractor’s Software maintenance shall be as set for in the Contractor Software Maintenance Agreement (Exhibit E-1) attached to Exhibit E.

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 F and incorporated herein.

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-4, 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 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 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 **Five Hundred Thousand Dollars (\$500,000)** 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 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 SOLUTION ACCEPTANCE**

Upon final delivery 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-4 and Exhibits E and E-1). Final Solution Acceptance will occur upon successful completion of the acceptance tests. When Final Solution Acceptance occurs, the Parties will memorialize this event by promptly executing a Final Solution Acceptance Certificate (Exhibit A-5).

If, in the discretion of City, the Solution does not meet the requirements of the acceptance test specifications, City may (1) permit Contractor to repair or replace the Solution so that the same meets the acceptance test specifications in all material respects, all at no additional expense to City or (2) return the Solution to Contractor, at Contractor's expense and without liability to City, and any amounts paid by City for the Solution 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 Solution 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 notification to Contractor any and all of the Solution which does 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 and Exhibits E and E-1);
- 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 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 Software

Unless otherwise stated in the Contractor End User License Agreement (Exhibit E), Contractor warrants the Contractor Software for one (1) year from the date of Final Solution Acceptance in accordance with the terms of the Software License Agreement and the provisions of Section 11.

12.5 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 Solution Acceptance (“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 the Scope of Services (Exhibits A-1 through A-4 and Exhibits E and E-1). 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 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.

12.6 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 through A-4 and Exhibits E and E-1, Scope of Services.

12.7 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 Contractor End User License Agreement (Exhibits E and E-1).

12.8 New Media

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

- 12.8.1 Shall be new and free from defects in manufacture and materials;
- 12.8.2 Shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties;
- 12.8.3 Shall, during the Warranty Period, function properly under ordinary use and operate in conformance with the specifications; and
- 12.8.4 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.

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 and reimbursable expenses incurred to the date of termination.

15 INDEMNIFICATION

Contractor shall defend, indemnify, and hold harmless City, its officers, employees, and agents against any 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. 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. Contractor

shall not resell any Data it gains access to in the course of doing business for the City or in any way share or convey this information to another party or use it for any other purpose but to provide the contracted products and services specified in this Agreement. 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 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 and Software 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 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, require that custody 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. 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: SinWaves, Inc. dba LYT
Attention: Timothy S. Menard
3080 Olcott Street, Suite D125
Santa Clara, CA 95054
(650) 564-4827
tim@lyt.ai

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-RFP2022.02.10021 for Centralized Transit Signal Priority Solution issued on February 17, 2022 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

SinWaves, Inc. dba LYT

a Delaware corporation

authorized to conduct business in California



Email: luz.cofresi-howe@sanjoseca.gov
Date: 08/14/2022 GMT

By _____

Luz Cofresi-Howe

Assistant Director, Finance



Email: tim@lyt.ai
Date: 08/11/2022 GMT

By _____

Tim Menard

Founder/CEO

APPROVED AS TO FORM:



Email: diana.yuan@sanjoseca.gov
Date: 08/12/2022 GMT

Diana Yuan

Deputy City Attorney



Email: dustin@lyt.ai
Date: 08/12/2022 GMT

By _____

Dustin Harber

Chief Technology Officer

EXHIBIT A-1

SCOPE OF SERVICES

The following Scope of Services defines the principal activities and responsibilities of Contractor and the City for a Centralized Transit Signal Priority Solution.

To the extent not inconsistent with the Agreement between the City and Contractor, City’s RFP PUR-RFP2022.02.10021 (including all addenda and updates) issued on February 17, 2022, Contractor’s proposal response dated March 24, 2022 are incorporated herein by reference to provide context and supplemental information.

In the performance of this Scope of Services, Contractor shall comply with all applicable City Policies, including [City Policy Manual 1.3.12](#), COVID-19 Mandatory Vaccination, which requires all contractors who provide onsite services to the City be vaccinated for COVID-19.

1 **PROJECT STAFF**

1.1 City’s Project Manager

Name: Eric Lee	Phone No: (408) 975-3230
Department: Transportation	E-mail: eric.lee@sanjoseca.gov
Address: 200 E. Santa Clara Street, 8 th Floor, San José, CA 95113	

1.2 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: Jonathan Husband	Phone No.: (601) 454-7292
Address: 3080 Olcott Street, Suite D125 Santa Clara, CA 95054	E-mail: jonathan@lyt.ai
Other Staffing	
Name	Assignment
1. Timothy Menard	Project Administrator
2. Hicham Chatila	Project Director – Subcontractor: Parametrix
3. Dustin Harber	Lead Systems Engineer
4. Patrick Armijo	Traffic Engineer
5. Timofey Mokhnatkin	Product Updates/QA
6. Eric Nelson	Subcontractor: Fourth Dimension

2 **INTRODUCTION AND OVERVIEW**

- 2.1 The City is partnering with the Santa Clara Valley Transportation Authority (VTA), the agency responsible for public transit services, congestion management, and countywide transportation planning for Santa Clara County.
- 2.2 The goals of this project are to (1) optimize traffic flow by automating optimal signal timing; (2) proactively prioritize traffic related to transit services to improve the viability of using public transportation by reducing bus travel times and alleviating traffic congestion; and (3) reduce air pollution.
- 2.3 The Bay Area Air Quality Management District has approved a Transportation Fund for Clean

Air grant award to the City of San José to fund the implementation of the Solution along two VTA bus routes: 66 and 68. Through this grant, the City is seeking to deploy the Solution at a total of 122 signalized intersections (project locations) for these two bus routes.

3 CURRENT ENVIRONMENT

3.1 Cabinets

3.1.1 Twenty-five (25) intersections located in San José are controlled by California Department of Transportation Type 332 cabinets.

3.1.2 The remaining ninety-seven (97) intersections are either controlled by National Electrical Manufacturers Association TS1 P-Cabinets, National Electrical Manufacturers Association TS-2 P-Cabinets, or National Electrical Manufacturers Association TS-2 M-Cabinets.

3.2 Controllers

All intersections run McCain 2070 controllers with McCain ATC, McCain 1C, or Econolite 1C processors, and D4 firmware from Fourth Dimension. The controllers are centrally controlled using TransCore's TransSuite Advanced Traffic Management System.

3.3 Communications Network

3.3.1 The City's existing Internet Protocol-based (IP-based) traffic signal communications network is comprised of fiber backbones, legacy signal interconnect copper, and wireless broadband radios operating over the 900MHz and 5.8GHz frequencies.

3.3.2 The existing communications network provides a minimum of 16 Mbps in bandwidth to each project location. This project will leverage the City's existing IP communications network, with no communications-related enhancements.

3.3.3 The City's field traffic signal communications network is isolated and has no direct connection with the Internet.

4 ASSUMPTIONS

This Scope of Services is meant to be a general guide and is not intended to be a complete list of all the work necessary to complete the project, which shall be outcome-based, resulting in the successful deployment of the Solution at the 122 identified signalized intersections.

5 REQUIREMENTS AND SPECIFICATIONS

5.1 Contractor Solution shall include:

5.1.1 Commercial off-the-shelf software that interfaces with the City's existing 2,070 traffic signal controllers, Fourth Dimension signal controller software, and Swiftly, Inc.'s (hereinafter "Swiftly") platform for transit-vehicle data (<https://www.goswift.ly/>).

5.1.2 All hardware, software, and services required to design, develop, configure, deploy, maintain, and support the Solution.

5.2 Contractor shall design, develop, configure, and deploy the Solution at 122 identified signalized intersections for VTA bus routes 66 and 68. The intersections for the deployment of the Solution are listed in Exhibit A-2, Centralized Transit Signal Priority Project Locations, but an updated list will be provided to Contractor by the City as required to complete implementation. A map of the bus routes is shown in Exhibit A-3, Project Bus Routes Map.

- 5.2.1 Route 66 runs from the International Circle and Kaiser Hospital stop in South San José to the Milpitas Transit Center, with numerous stops in between, including Monterey Road, downtown San José, and the area near the Milpitas Bay Area Rapid Transit station. There are 83 signals operated by the City along this route.
- 5.2.2 Route 68 runs from the Gilroy Transit Center to San José's Diridon Station, with numerous stops in between, including Morgan Hill and Monterey Road. There are 87 signals operated by the City along this route.
- 5.2.3 A total of 33 signals overlap both routes for a total of 122 unique traffic signals operated by the City.
- 5.2.4 After design considerations, additional routes and/or intersections may be negotiated and added to the Solution in accordance with Section 3 Additional Services of Exhibit B - Compensation.
- 5.3 Standards and References
 - 5.3.1 The Solution must support the National Transportation Communications for Intelligent Transportation Systems Protocol (NTCIP), specifically NTCIP 1202, *Object Definitions for Actuated Traffic Signal Controller (ASC)*, as implemented by the controller firmware contractor, Fourth Dimension.
 - 5.3.2 The Solution shall support support NTCIP 1211, Object Definitions for Signal Control and Prioritization.
 - 5.3.3 The latest versions of the protocols can be accessed at <http://www.ntcip.org/document-numbers-and-status/>.
- 5.4 Interfaces
 - 5.4.1 The Solution shall be capable of interfacing with the City's existing McCain 2070 traffic signal controllers running Fourth Dimension software.
 - 5.4.2 The Solution must be capable of leveraging Swiftly's cloud-based, open API. Information about Swiftly's API can be located at <http://realtime-docs.goswift.ly/>.
- 5.5 Architecture
 - 5.5.1 The Solution shall be, primarily, software-based, requiring no additional hardware in the field, including, but not limited to signalized intersections.
 - 5.5.2 An exception shall be made for one Contractor-provided hardware device in the demilitarized zone to enable communication between the cloud and the traffic signal communications network, and associated device-specific cabling necessary to properly install and secure this device at City Hall.
 - 5.5.3 Contractor shall deploy the most current version of the hardware and software pertaining to the Solution at the time of implementation. However, the City does not intend to be an early adopter of the Solution, and the Solution shall be a mature and not a prototype or a version that is not fully tested.
 - 5.5.4 All such hardware or software shall adhere to the following requirements:
 - 5.5.4.1 All Contractor-installed software and Contractor-installed hardware shall meet all information technology and security requirements as set forth in Exhibit F;
 - 5.5.4.2 Contractor-installed hardware at City Hall must not exceed the size of 1U or

- a height of 1.75 inches between rack shelves;
- 5.5.4.3 Contractor-installed hardware/software must not require a public IP address;
- 5.5.4.4 Contractor-installed hardware/software must use encrypted transmission control protocol communications of advanced encryption standard 256-bit or stronger when communicating with Contractor's cloud-based server, if applicable;
- 5.5.4.5 Contractor-installed hardware/software must support a virtual private network for access to its on-premise equipment for regular administration and maintenance. City will provide Contractor with virtual private network access for the duration of the contract term; and
- 5.5.4.6 Contractor must monitor and maintain the health of any Solution-related on-premise system hardware. If the hardware is found to be faulty, Contractor must coordinate with City staff to immediately exchange the faulty hardware within 72 hours of notification.
- 5.5.5 The Solution must be a third-party, center-to-center, and single-purpose system, operating as its own platform without the need of an advanced traffic management system.
- 5.5.6 The Solution must be capable of integrating automatic vehicle location (AVL) information from the VTA with the City's traffic signal controller information — with VTA's AVL system pushing location data every 5 seconds to Swiftly — and, when applicable, information from agencies responsible for areas abutting the City's boundaries, e.g., when a public-transit bus traverses two (2) different cities spanning two local-government agencies, AVL information needs to be processed by the Solution and given to traffic controllers in both cities to facilitate a seamless transition.
- 5.5.7 The Solution must be scalable to accommodate every City traffic signal, regardless of signal controller vendor or type, e.g., McCain, Econolite ATC, etc..
- 5.5.8 The Solution must obtain AVL information from the VTA's central system (or its hosting partner) and communicate all transit signal prioritization calls and controller status directly to and from the signal controllers via NTCIP protocols.
- 5.6 Operation
 - 5.6.1 The Solution must be capable of prioritizing VTA transit vehicles based on parameters established by the VTA and City.
 - 5.6.2 The Solution must place transit signal prioritization calls using NTCIP to individual intersections as needed by transit vehicles, while limiting impact to surrounding traffic. The Solution must not "hold" transit signal prioritization calls. Note that City's controllers are configured to extend transit greens by up to 15 seconds.
 - 5.6.3 The Solution shall be capable of dynamically adjusting the timing of its transit signal prioritization calls to reflect a targeted travel time of the approaching transit vehicles. At a minimum, the Solution must accomplish this by incorporating factors that could impact travel time, such as real-time traffic conditions, historical trends, and varying bus-boarding times.
 - 5.6.4 The Solution must not utilize geofencing, bounding boxes, or other virtual perimeters

as its primary method to place transit signal prioritization calls to the controller.

- 5.6.5 The Solution must be capable of granting priority to transit vehicles at all target intersections with the express objective of minimizing travel time. However, if required, the Solution must support schedule, including headway adherence, and only grant priority to transit vehicles when needed.
- 5.6.6 The Solution must communicate with traffic signal controllers using NTCIP and Fourth Dimension's proprietary transit signal priority Management Information Base.
- 5.6.7 Priority call latency from the Solution to any traffic signal controller shall not exceed one (1) second.
- 5.6.8 Solution latency shall not exceed three (3) seconds from the time data is received from Swiftly to the time a transit signal prioritization call is received by a controller.
- 5.6.9 The Solution must not interfere, impact, or in any way modify the City's existing centralized emergency vehicle preemption system, TransCore advanced traffic management system, Econolite automated traffic signal performance measures system, Kimley-Horn Kadence adaptive traffic signal control system, and any traffic signal controller setting unless specifically permitted by the City.
- 5.6.10 Railroad and emergency vehicle preemption shall supersede that of the Solution.
- 5.6.11 The Solution must have a monthly uptime performance of greater than 99%, measured over 24 hours per day, 7 days a week, 365 days a year.
- 5.6.12 The Solution must support the ability to configure or customize relevant transit signal prioritization parameters that will affect operational change or needs. City will work with Contractor to further define these parameters and add others as required.
- 5.6.13 The Solution shall include the following features:
 - 5.6.13.1 Toggling transit signal prioritization on/off for each project intersection;
 - 5.6.13.2 Allowing users to adjust the transit green extension time;
 - 5.6.13.3 Editing transit signal prioritization phases and intersection phase mapping;
 - 5.6.13.4 Configuring the estimated time of arrival (ETA) for each transit approach; and
 - 5.6.13.5 Overriding transit signal prioritization operation mode (none, travel time, schedule, and headway).

5.7 Access and Web Interface

- 5.7.1 The Solution must provide a simple and secure internet-accessible graphical user interface with the following features:
 - 5.7.1.1 Browser-agnostic and operate on all versions of Microsoft Edge, Microsoft Internet Explorer, Apple Safari, Mozilla Firefox, and Google Chrome currently supported by their respective organizations;
 - 5.7.1.2 Supports multiple user accounts administered by City and VTA staff, with each user account having definable role-based access rights, specifically a combination of create, read, write, update, and delete privileges; and
 - 5.7.1.3 Displays a live map showing real-time locations of all transit vehicles and current transit signal prioritization and relevant signal operation information

such as an intersection's phase statuses.

- 5.7.1.4 The Solution shall display the following additional information when transit vehicles are selected:
 - Bus number, run, block, and route;
 - Real-time speed;
 - Real-time, on-time performance, and headway compliance (bunched, expected, gapped, and layover/deadhead);
 - Next transit-stop location; and
 - Estimated time of arrival for the next stop on the route.
- 5.7.2 The Solution shall ensure that current transit signal prioritization status from all affected signals is polled from the controllers and displayed on the web interface when priority is requested by a selected transit vehicle.
- 5.7.3 The Solution shall display the following defined transit signal prioritization states:
 - 5.7.3.1 Reservice Inhibited – Priority being denied due to an active reservice inhibit timer;
 - 5.7.3.2 Priority Pending – Priority is pending due to another active transit priority request;
 - 5.7.3.3 Defer to Next Cycle – Priority for this phase is deferred until the next cycle because the travel time is greater than the current cycle;
 - 5.7.3.4 No Adjust – The cycle requires no adjustment for transit arrival;
 - 5.7.3.5 Early Green - The current cycle is undergoing an abbreviation to achieve early green;
 - 5.7.3.6 Extend Green – The current cycle is undergoing an extension of its maximum time; and
 - 5.7.3.7 Recover – Priority service to the transit phase caused one or more phases to be extended beyond their normal termination point resulting in a recovery cycle.
- 5.8 Reporting Requirements
 - 5.8.1 The Solution shall provide transit signal prioritization performance reports and metrics necessary to assess the effectiveness of the Solution.
 - 5.8.2 Reports shall be available for viewing in the user interface or downloadable as CSV or Excel files.
 - 5.8.3 At a minimum, the Solution must support querying transit signal prioritization data by any combination of the following parameters:
 - 5.8.3.1 By route, on a per-trip basis;
 - 5.8.3.2 By intersection;
 - 5.8.3.3 By a user-definable period (selectable by date and hour); and
 - 5.8.3.4 By a user-defined geographic area.
 - 5.8.4 Upon specifying the above query parameters, the Solution must, at a minimum, report

on the following transit signal prioritization performance metrics and data as applicable:

- 5.8.4.1 Route and intersection data;
 - 5.8.4.2 Successful priority calls, defined as a percentage over the user's defined time period. Success shall be defined as a vehicle traveling through the intersection at 5 mph or higher;
 - 5.8.4.3 Number of transit vehicles requesting priority;
 - 5.8.4.4 Transit vehicle travel times, individual and average, between signals and the entire route;
 - 5.8.4.5 Transit vehicle delay, defined as the amount of time the transit vehicle spent stopped at a signal;
 - 5.8.4.6 Cycle failures by intersection and trip, specifically the condition where a transit vehicle unexpectedly gets stuck in traffic and takes multiple cycles to travel through a signalized intersection;
 - 5.8.4.7 Frequency of cycle failures at each intersection and the number of cycles per occurrence;
 - 5.8.4.8 Delays caused to regular vehicles on cross streets;
 - 5.8.4.9 Delays caused to pedestrians at crosswalks;
 - 5.8.4.10 Delays caused to transit vehicles because of pedestrian calls; and
 - 5.8.4.11 On-time performance and headway compliance (bunched, expected, gapped, and layover/deadhead)
- 5.8.5 The City reserves the right to request up to 25 additional reports from Contractor at no additional cost to the City. Upon the City's request, Contractor shall provide the City a proposed report format and, upon approval by the City provide, deliver the report to the City within fifteen (15) business days unless otherwise agreed to by the parties.
- 5.9 VTA Data Specifications
- 5.9.1 VTA transit vehicles have a global positioning system (GPS) device onboard capable of reporting:
 - 5.9.1.1 Latitude in degrees;
 - 5.9.1.2 Longitude in degrees;
 - 5.9.1.3 Direction of travel;
 - 5.9.1.4 Real-time vehicle speed;
 - 5.9.1.5 Unique vehicle ID;
 - 5.9.1.6 Time of measurement;
 - 5.9.1.7 Bus number, run, block, and route;
 - 5.9.1.8 Real-time speed;
 - 5.9.1.9 Real-time, on-time performance, and headway compliance (bunched, expected, gapped, and layover/deadhead);
 - 5.9.1.10 Next transit-stop location; and

- 5.9.1.11 Estimated time of arrival for the next stop on the route.
 - 5.9.2 VTA transit vehicles report location information with unique record identifiers at a frequency of no more than one poll every five (5) seconds.
 - 5.9.3 VTA will provide Contractor bus route maps, schedules, and any updates to both as routes change.
 - 5.9.4 VTA will provide Contractor the location of bus stops and route numbers that service them in a CSV, Excel, or JSON file structure.
 - 5.9.5 VTA's AVL system pushes location data every 5 seconds to the public data-hosting platform, Swifly (goswift.ly). More information about the Swifly API can be obtained from <https://realtime-docs.goswift.ly> or from Swifly staff at contact@goswift.ly.
 - 5.9.6 The Solution shall be capable of ingesting AVL data from the VTA, specifically GPS data as noted above. Additionally, the Solution shall be capable of ingesting VTA-provided data transit vehicle report location and information regarding bus route maps, schedules, and any changes thereto.
 - 5.9.7 The Solution shall be capable of obtaining VTA's location data directly from Swifly, using Swifly's open API and any specific methods including, but not limited to, any interfaces Swifly maintains.
 - 5.9.8 Delivery of information referenced above may include, but is not limited to: Swifly, 511.org feeds, or geographic information system (GIS) files provided by VTA staff.
- 5.10 City Data Specifications
- 5.10.1 City will provide a list of IP address and NTCIP port numbers for each traffic signal controller to Contractor.
 - 5.10.2 City will provide Contractor with signal phase diagrams for each project intersection in accordance with NEMA standards.
 - 5.10.3 City will provide Contractor with the City's standard transit signal prioritization operating policies for use at the project intersections. Such information can include, and is not limited to, preferred transit signal prioritization method(s), allowable minimum green time, maximum green extension time, and other applicable transit signal prioritization and controller settings.

6 IMPLEMENTATION PROCESS AND REQUIREMENTS

This section defines the principal activities and responsibilities of Contractor and City for the deployment of the Solution.

6.1 Contractor Responsibilities

- 6.1.1 Contractor must assign a Project Manager to lead the tasks for the implementation of the Solution. Contractor's Project Manager shall be the primary person communicating with the City and keeping City fully apprised of the status and progress of the project. Contractor's Project Manager shall also be responsible for updates to the project schedule, creating and preparing progress reports and meeting minutes, adherence to project scheduling, and general project coordination.
- 6.1.2 Contractor must work closely with City staff in the performance of services, and must be available to the City's staff, stakeholders, and other staff at all reasonable times.

6.1.3 Contractor must develop and maintain a detailed project schedule containing all deliverables, tasks, and milestones as described in Tasks 1 through 5 below.

6.2 City Responsibilities

6.2.1 City will provide oversight for the entire project, but Contractor must provide overall project management for all tasks in the scope of this contract.

6.2.2 City will assign a project manager, who will work closely with Contractor to facilitate the successful completion of the implementation process and will be responsible for supervising the City staff assigned to the project, ensuring their cooperation and participation in such process. The City’s project manager will maintain project communication with the Contractor’s Project Manager.

6.2.3 City will provide Contractor with information, where required, to configure the Solution.

6.2.4 The City acknowledges that the success and timeliness of the implementation process requires the active participation and collaboration of the City and its staff. City agrees to act reasonably and cooperate fully with Contractor to achieve the completion of the project.

6.3 Project Schedule

6.3.1 Contractor must meet all project deliverables and dates in accordance with an approved project schedule (“Project Schedule”). Any changes to the project schedule, which have the potential to impact the completion date of any and all deliverables, must be mutually agreed upon by Contractor and City before being incorporated into a revised project schedule.

6.3.2 Contractor must implement the Solution in accordance with Task 1, Task 2, Task 3, Task 4, and Task 5 detailed in this Scope of Services in addition to other tasks and activities identified by City and/or Contractor as being necessary for the successful implementation of the Solution.

6.4 Hardware- and Software-Related Responsibilities

The purpose of the table below is to provide a general summary of the hardware and software requirements and respective responsibilities of the Parties for their provision, installation, and implementation.

Item	Description	Responsibility
Solution	Center-to-center, network-based TSP application, that may reside primarily on a cloud-hosted or on-premise server.	Contractor shall provide, install, and configure according to the provisions of this Attachment A, Scope of Services and Requirements. Contractor shall provide, configure, and deploy all equipment that resides in the cloud. Software installation shall include all required client and/or browser components.
Field Equipment - Cabinet/Controller Hardware/Software	Controller hardware/software and any applicable cabinet components, e.g., network switches, at all project locations.	City will procure all hardware related to the required cabinet components and controller. City will be responsible for the installation and configuration of networking switches and controller hardware/software necessary for the

Item	Description	Responsibility
		Solution.
Server Hardware (if applicable)	On-premise PC- based computer system, serving as a proxy between any cloud-hosted server and field controllers	Contractor shall furnish and provide City instructions to install any on-premise equipment for the purpose of network communication to the traffic signal controllers.

6.5 Task 1: Project Management

6.5.1 Project Kickoff Meeting

Contractor must conduct a project kickoff meeting in order to:

- 6.5.1.1 Introduce Contractor’s implementation team;
- 6.5.1.2 Review initial project schedule and deliverables;
- 6.5.1.3 Discuss change control procedures (if necessary);
- 6.5.1.4 Develop consensus on overall project approach;
- 6.5.1.5 Set timelines for Contractor deliverables, City review periods, scheduling of implementation, and other administrative details;
- 6.5.1.6 Clarify areas of responsibilities of the Contractor and City for the implementation; and
- 6.5.1.7 Identify implementation risks and propose mitigation factors.

6.5.2 Contractor shall prepare minutes of the project kickoff meeting which shall be distributed to City staff within the deadlines specified below in Project Status Meetings.

6.5.3 Project Status Meetings

- 6.5.3.1 After the initial kickoff meeting, Contractor shall arrange and facilitate project status meetings at least twice a month in the early project stages to provide status on progress, schedule, and any other pertinent items. Meeting cadence can taper off as the project progresses and when mutually agreed upon by both parties.
- 6.5.3.2 Prior to each project status meeting, Contractor must provide to the City:
 - An action item list that specifies items to be completed within the next reporting cycle, with the person responsible for the completion of the item noted; and
 - An updated Project Schedule showing current status of each task.
- 6.5.3.3 After each project status meeting, Contractor shall:
 - Submit a draft of the minutes of the project status meeting in electronic format within five (5) calendar days. The minutes must include the names of meeting attendees and details pertaining to discussions, issues, and items agreed upon by City and Contractor. City will have five (5) working days from receipt of the draft of the minutes of the project status meeting to submit comments; and

- Submit a final version of the minutes of the project status meeting within two (2) business days after receipt of City’s comments on the draft of the project status meeting minutes. City shall have the final authority on any conflicts between the information contained in the draft of the minutes of the project status meeting and the information contained in the final version of the minutes of the status meeting.

6.5.4 Monthly Status Reports

- 6.5.4.1 In addition to the meeting minutes, Contractor must submit monthly status reports.
- 6.5.4.2 The monthly report must provide a summarized narrative of the tasks completed and any risk factors that may impact the project schedule and budget.

6.5.5 Deliverables

Contractor shall ensure that Task 1 includes the following deliverables:

- 6.5.5.1 Kickoff meeting;
- 6.5.5.2 Drafts of the meeting minutes based on the frequency of the meetings;
- 6.5.5.3 Final versions of the meeting minutes; and
- 6.5.5.4 Monthly status reports

6.6 **Task 2: Solution Deployment**

6.6.1 Contractor shall analyze each of the 122 identified signalized intersections along VTA bus routes 66 and 68 shown in Exhibit A-2, Centralized Transit Signal Priority Project Locations, as may be updated as required by City during implementation, and develop and submit:

- 6.6.1.1 A written comprehensive implementation plan detailing the steps necessary to implement the Solution; and
- 6.6.1.2 a document, “Controller Transit Signal Prioritization Data Specifications,” that details all signal controller and Solution settings for each project location and route.

6.6.2 Contractor must ensure that the implementation plan minimizes the amount of work and time required to analyze, configure, and deploy the Solution.

6.6.3 Contractor must provide City all technical requirements to enable the City to:

- 6.6.3.1 procure any required new devices and equipment, such as field network communication equipment and servers to support the Solution; and
- 6.6.3.2 install City-furnished equipment needed for the Solution.

6.6.4 Non-field Equipment

- 6.6.4.1 Contractor must perform all necessary services to configure and deploy non-field equipment including, but not limited to:
 - Configuration of City-supplied servers, if applicable;
 - Definition and incorporation of all intersection parameters into the Solution; and

- Conversion and development of intersection databases related to the Solution, if applicable.

6.6.4.2 Any conversions, modifications, or other manipulations of data or Solution settings required for optimal Solution operation shall be the sole responsibility of the Contractor.

6.6.5 Deliverables

Contractor must ensure that Task 2 includes the following deliverables:

- 6.6.5.1 A draft of the implementation plan;
- 6.6.5.2 A final version of the implementation plan;
- 6.6.5.3 A draft of the controller transit signal prioritization data specifications;
- 6.6.5.4 A final version of the controller transit signal prioritization data specifications;
- 6.6.5.5 A document specifying the requirements for field communications, if applicable;
- 6.6.5.6 Completed installation of all Solution-related, non-field equipment; and
- 6.6.5.7 A Solution architecture and design document describing and depicting the overall Solution architecture in terms of network, security, systems, hardware, software, interfaces with boundary systems, data exchanged between boundary systems, tools, peripherals, software licenses and subscriptions, and the logical distribution of Solution components and processes across the architecture.

6.7 **Task 3: Verification Plan / Final Acceptance**

- 6.7.1 A verification plan shall be developed by Contractor, with input derived from City and VTA staff, based on the features and functionality to be delivered in accordance with this Exhibit A-1, Scope of Services, prior to commencement of the test.
- 6.7.2 City will commence verification of the Solution based on the verification plan upon completion of all software and hardware installations, demonstration of all Solution functions during the deployment process, and Contractor's compliance with the requirements of Tasks 1 and 2 for each project location.
- 6.7.3 Contractor shall conduct the verification test with data spanning forty-five (45) calendar days of use of the Solution prior to the commencement of the verification test to ensure that data collection, analysis, storage, and retrieval are all performing as expected, except in the case of:
 - 6.7.3.1 Downtime caused by failures in the building's power and air conditioning;
 - 6.7.3.2 Downtime caused by action of the City's technical or operation support staff (e.g., disconnecting a cable or entering an incorrect command that causes the project Solution components to crash); and
 - 6.7.3.3 Downtime caused by hardware and network environment problems unrelated to the Contractor-implemented Solution.
- 6.7.4 Verification of the Solution shall be scheduled at City's sole discretion and shall be conducted by the Contractor, in the presence of City and VTA staff.

- 6.7.5 Upon completion of the verification test and approval by City, City will notify Contractor in writing and City will assume ownership and responsibility of the Contractor-provided Solution.
- 6.7.6 Contractor must ensure that the Solution is in production (“Go Live”) after the verification test has been successfully completed and the results have been approved by the City, specifically with live data being analyzed and processed.
- 6.7.7 Final acceptance of the Solution by the City shall constitute the verification of all features, functionality, and integrity of data – in accordance with the verification plan – of a fully functional, and stable Solution in a production-ready environment after going live (“Final Solution Acceptance”).

6.7.8 Deliverables

Contractor must ensure that Task 3 includes the following deliverables:

- 6.7.8.1 A draft of the verification plan;
- 6.7.8.2 A final version of the verification plan; and
- 6.7.8.3 Final Solution Acceptance

6.8 **Task 4: Training**

- 6.8.1 Contractor shall submit a comprehensive training plan, for City approval, that provides for:
 - 6.8.1.1 hands-on training to introduce the City staff to the Solution and its operation; and
 - 6.8.1.2 information pertaining to features, and other pertinent information, to understand and analyze the Solution’s performance metrics.
- 6.8.2 Training shall be conducted in two phases:
 - 6.8.2.1 at initial Solution implementation prior to the deployment of the Solution at the first project route; and
 - 6.8.2.2 once the City has worked with the Solution for a set period of time. The period of time will be determined by the City at a later date and conveyed to the Contractor.

The time and location of training sessions shall be scheduled jointly by the Contractor and City and shall be tailored to address the City’s specific learning needs.

- 6.8.3 Training must cover, at a minimum, Solution capabilities and limitations, required initial and ongoing inputs, Solution configuration, and information specific to operating and troubleshooting the Solution.
- 6.8.4 The training plan must include training session agendas, course goals and objectives, and an outline of the information to be presented to City staff. The training sessions will be conducted at City facilities with a total of no more than twenty (20) City personnel receiving the training. City will provide the necessary workstations/laptops to access the Solution for training purposes. City may elect to record these training sessions for City’s sole use for future training purposes. The resulting recordings shall be the sole property of the City and for the sole use of City personnel.

6.8.5 Deliverables

Contractor must ensure that Task 4 includes the following deliverables:

- 6.8.5.1 A draft of the training plan;
- 6.8.5.2 A final version of the training plan;
- 6.8.5.3 Training - Phase I – Conducted prior to the initial Solution implementation; and
- 6.8.5.4 Training - Phase II – To be determined at a later date, once the City has worked with the Solution for a set period of time.

6.9 **Task 5: Solution Documentation**

- 6.9.1 Contractor shall provide documentation covering the operation and maintenance of the Solution, including troubleshooting, Solution configuration, and all other technical and reference information related to the Solution including a list of “Frequently Asked Questions” compiled by Contractor.
- 6.9.2 Contractor must provide one (1) electronic copy of all documentation.
- 6.9.3 Deliverable

Contractor must ensure that Task 5 includes the following deliverable: Documentation - Operation and Maintenance Manual.

7 **TECHNICAL SUPPORT AND MAINTENANCE**

- 7.1 Following Final Solution Acceptance, Contractor must warrant, and provide technical support and maintenance services for the Solution by phone, email, and on-site support for a period of one (1) year.
- 7.2 Contractor must perform periodic checkups and tune-ups at least one every two months to check the performance of the Solution and keep a log documenting the dates, times, and results of such tests.
- 7.3 Contractor must correct any operational issues of the Solution such that the Solution conforms in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in this RFP and any applicable documentation.
- 7.4 Contractor must fix critical defects (e.g., Solution not reporting information, Solution down) within ten (10) business days from the time the defect is reported by the City or discovered by Contractor. Contractor must notify the City at least five (5) business days in advance of deploying any potentially service-impacting modifications (excluding emergency patches/fixes) and at least fifteen (15) business days in advance of any intent to release any major improvements or Solution-related enhancements and include a description of the intended enhancements or improvements.
- 7.5 Hardware-related critical defects must be resolved or replaced seventy-two (72) hours from notification by City.
- 7.6 Contractor must coordinate with City at least two (2) weeks in advance of any planned software maintenance.

8 **SUPPLEMENTAL SERVICES**

- 8.1 Upon request by City in accordance with Section 8 of the Agreement, Contractor shall provide supplemental services in connection with, and directly related to, the project and reimbursed at the rates identified in Exhibit B - Compensation.

- 8.2 Supplemental services related to the Solution may include, but are not limited to, the following:
- 8.2.1 Project Management;
 - 8.2.2 Analysis pertaining to the Solution for one or more intersections, with enough details to design, configure, and deploy the Solution at the intersection(s) in question;
 - 8.2.3 Implementation – including, but not limited to Tasks 1, 2, 3, 4, and 5 – of the Solution for additional bus routes and intersections;
 - 8.2.4 Additional Solution-related training for up to 8 hours on-site in San José, including any accompanying documentation;
 - 8.2.5 Development of new Solution features mutually agreed upon by Contractor and City;
 - 8.2.6 Development of additional reporting and visualization tools beyond those already available; and
 - 8.2.7 Any additional task(s) to be completed based on feedback from City and/or VTA up to a maximum of 80 person-hours of labor.

9 **WARRANTY REQUIREMENTS**

- 9.1 Contractor shall provide a minimum of one (1) year of warranty on all software and, where applicable, hardware. The warranty shall begin upon Final Solution Acceptance by the City of San José of the provided products, software, and services.
- 9.2 Contractor shall ensure that all products, software, and services delivered are free from defects and must remain free of defects throughout the warranty period.
- 9.3 Contractor shall repair or replace defective or nonconforming products, software, or services in accordance with the response and resolution times specified in Section 7.4 above. Contractor shall use the most expeditious manner possible when performing correction or fixes.
- 9.4 Contractor shall be responsible for any and all travel and shipping expenses, if any, associated with warranty-related software fixes.
 - 9.4.1 signal interconnect copper, and wireless broadband radios operating over the 900MHz and 5.8GHz frequencies.
 - 9.4.2 The existing communications network provides a minimum of 16 Mbps in bandwidth to each project location. This project will leverage the City’s existing IP communications network, with no communications-related enhancements.
 - 9.4.3 The City’s field traffic signal communications network is isolated and has no direct connection with the Internet.

EXHIBIT A-2

CENTRALIZED TRANSIT SIGNAL PRIORITY LOCATIONS

Line #	Shop ID #	Intersection Name	VTA Route(s)	Cabinet Type	Cabinet/Controller I/O
1	751	Calle Artis & Oakland Rd	66	P	TS-1
2	968	Oakland Rd & Rock Av	66	P	TS-1
3	767	Fox Ln & Oakland Rd	66	P	TS-1
4	695	McKay Dr & Oakland Rd	66	P	TS-1
5	489	Brokaw Rd/Murphy Av & Oakland Rd	66	P	TS-2
6	1064	Oakland Rd & Pear Orchard Dr	66	P	TS-2
7	448	Corie Ct/Schallenberger Rd & Oakland Rd	66	P	TS-1
8	770	Berger Dr & Oakland Rd	66	P	TS-1
9	406	Gish Rd & Oakland Rd	66	P	TS-2 Type 2
10	526	Commercial St & Oakland Rd	66	P	TS-2
11	659	Bayshore Fr N & Oakland Rd	66	332	TS-1
12	660	Bayshore Fr S & Oakland Rd	66	332	TS-1
13	152	Hedding St & Oakland Rd/Thirteenth St	66	P	TS-1
14	207	Eleventh St & Hedding St	66	M	TS-2
15	137	Hedding St & Tenth St	66	P	TS-2
16	66	Taylor St & Tenth St	66	M	TS-2
17	111	Jackson St & Tenth St	66	M	TS-2
18	239	Empire St & Tenth St	66	M	TS-2
19	79	Julian St & Tenth St	66	P	TS-1
20	76	Saint James St & Tenth St	66	P	TS-1
21	248	Saint John St & Tenth St	66	M	TS-2
22	32	Santa Clara St & Tenth St	66	P	TS-2 Type 2
23	211	Eleventh St & Santa Clara St	66	P	TS-2
24	355	Eleventh St & Saint John St	66	P	TS-1
25	210	Eleventh St & Saint James St	66	P	TS-1
26	209	Eleventh St & Julian St	66	P	TS-1
27	240	Elevent St & Empire St	66	M	TS-2
28	503	Eleventh St & Jackson St	66	M	TS-2
29	208	Eleventh St & Taylor St	66	M	TS-2
30	804	Ninth St & Santa Clara St	66	P	TS-1
31	36	Santa Clara St & Seventh St	66	P	TS-1
32	933	Santa Clara St & Sixth St	66	P	TS-1
33	220	Fifth St & Santa Clara St	66	P	TS-1
34	16	Fourth St & Santa Clara St	66	P	TS-1
35	15	Santa Clara St & Third St	66	M	TS-2
36	419	Skyway Dr & Snell Av	66	P	TS-1
37	467	Branham Ln & Snell Av	66	P	TS-2
38	1065	Martial Cottle Park & Snell Av	66	M	TS-2
39	471	Chynoweth Av & Snell Av	66	P	TS-2
40	720	Avenida Del Roble/Tradewinds Dr & Snell Av	66	P	TS-1
41	456	Giuffrida Av & Snell Av	66	P	TS-1
42	238	Blossom Hill Rd & Snell Av	66	P	TS-1
43	608	Snell Av N & Snell Av	66	P	TS-1
44	632	Snell Av S & Snell Wy	66	P	TS-1

45	482	Calero Av & Snell Av	66	P	TS-1
46	314	Santa Teresa Bl & Snell Av	66	P	TS-1
47	616	Dunn Av & Santa Teresa Bl	66	P	TS-1
48	386	Lean Av & Santa Teresa Bl	66	P	TS-1
49	343	Cottle Rd & Santa Teresa Bl	66	P	TS-2 Type 2
50	437	Camino Verde Dr & Santa Teresa Bl	66	P	TS-2 Type 2
51	6	Santa Clara St & Second St	66, 68	P	TS-1
52	7	San Fernando St & Second St	66, 68	P	TS-1
53	9	San Carlos St & Second St	66, 68	P	TS-1
54	29	San Salvador St & Second St	66, 68	M	TS-2
55	460	Second St & William St	66, 68	M	TS-2
56	251	Reed St & Second St	66, 68	M	TS-2
57	461	First St & Reed St N/Reed St S	66, 68	P	TS-2
58	19	First St & San Salvador St	66, 68	M	TS-2
59	5	First St & San Carlos St	66, 68	P	TS-1
60	3	First St & San Fernando St	66, 68	P	TS-1
61	2	First St & Santa Clara St	66, 68	P	TS-1
62	46	First St & Virginia St	66, 68	P	TS-1
63	811	First St & Martha St/Oak St	66, 68	332	TS-1
64	31	First St & Willow St	66, 68	M	TS-2
65	96	First St & Goodyear St/Keyes St/Second St	66, 68	P	TS-1
66	531	First St & Humboldt St/Second St	66, 68	332	332
67	259	Alma Av & First St/Monterey Rd	66, 68	P	TS-1
68	1058	Cottage Grove Av & Monterey Rd	66, 68	P	TS-1
69	297	Monterey Rd & San Jose Av	66, 68	P	TS-1
70	298	Monterey Rd & Phelan Av	66, 68	P	TS-1
71	815	Monterey Rd & Staufer Bl	66, 68	P	TS-1
72	1023	Monterey Rd & The Plant Dw	66, 68	332	TS-1
73	174	Curtner Av/Tully Rd & Monterey Rd	66, 68	332	TS-1
74	169	Monterey Rd S & Old Tully Rd	66, 68	332	TS-1
75	434	Monterey Rd & Umbarger Rd	66, 68	332	TS-1
76	1006	Montecito Vista Dr & Monterey Rd	66, 68	P	TS-2
77	652	Lewis Rd & Monterey Hw	66, 68	332	TS-1
78	654	Monterey Rd & Southside Dr	66, 68	332	TS-1
79	662	Fehren Dr & Monterey Rd	66, 68	332	TS-1
80	233	Capitol Ex & Monterey Rd N	66, 68	332	TS-1
81	234	Capitol Ex & Monterey Rd S	66, 68	332	TS-1
82	235	Monterey Rd & Senter Rd	66, 68	332	TS-2 Type 2
83	271	Monterey Rd & Skyway Dr	66, 68	332	TS-1
84	961	Autumn St & LRT Crossing	68	P	TS-1
85	284	Autumn St & San Fernando St	68	P	TS-1
86	85	Montgomery St & San Fernando St	68	M	TS-2
87	508	Cahill St & Santa Clara St	68	332	332
88	25	Montgomery St & Santa Clara St	68	332	TS-1
89	285	Autumn St & Santa Clara St	68	332	TS-1
90	589	Guadalupe Fr & Santa Clara St	68	332	332
91	262	Almaden Bl/Notre Dame Av & Santa Clara St	68	P	TS-1

92	21	Almaden Av & Santa Clara St	68	P	TS-1
93	93	San Pedro St & Santa Clara St	68	P	TS-2
94	10	Market St & Santa Clara St	68	P	TS-1
95	1032	Cottle Rd & Endicott Bl	68	P	TS-2 Type 2
96	468	Branham Ln & Monterey Rd	68	332	TS-1
97	653	Edenview Dr & Monterey Rd	68	332	TS-1
98	360	Chynoweth Av/Roeder Rd & Monterey Rd	68	332	TS-1
99	242	Blossom Hill Rd & Monterey Rd	68	332	TS-1
100	123	Blossom Hill Rd S & Monterey Rd	68	P	TS-2
101	1014	Endicott Bl & Great Oaks Bl	68	P	TS-1
102	1011	Charlotte Dr & Great Oaks Bl	68	P	TS-1
103	1037	Endicott Bl & Hayes Av	68	P	TS-1
104	237	Concord Dr & Cottle Rd	68	P	TS-2 Type 2
105	192	Cottle Rd & Poughkeepsie Rd	68	P	TS-2 Type 2
106	1061	Coronado Av & Cottle Rd	68	P	TS-2 Type 2
107	499	Beswick Dr & Cottle Rd	68	P	TS-2 Type 2
108	636	Cottle Rd & West Valley Fr N	68	332	TS-1
109	637	Cottle Rd S & West Valley Fr S	68	332	TS-1
110	449	Cottle Rd & Hospital PW/Palmia Dr	68	P	TS-2 Type 2
111	343	Cottle Rd & Santa Teresa Bl	68	P	TS-2 Type 2
112	437	Camino Verde Dr & Santa Teresa	68	P	TS-2 Type 2
113	812	Encinal Dr/Lissow Dr & Santa Teresa Bl	68	P	TS-2 Type 2
114	431	Miyuki Av & Santa Teresa Bl	68	P	TS-2 Type 2
115	615	Park & Ride Lot & Santa Teresa Bl	68	P	TS-2 Type 2
116	501	San Ignacio Av & Santa Teresa Bl	68	P	TS-1
117	478	Great Oaks Bl/Vineyard Dr & Santa Teresa Bl	68	P	TS-1
118	638	Martinvale Ln & Santa Teresa Bl	68	P	TS-1
119	392	Bernal Rd & Santa Teresa Bl	68	P	TS-2
120	524	Chantilly Ln & Santa Teresa Bl	68	P	TS-2 Type 2
121	438	Avenida Espana & Santa Teresa Bl	68	P	TS-2 Type 2
122	543	Bailey Av & Santa Teresa Bl	68	P	TS-2 Type 2

Note: As field equipment frequently changes, City will provide Contractor with up to date current information for each location during Solution implementation.

EXHIBIT A-3 PROJECT BUS ROUTES MAP

Project Map of Locations

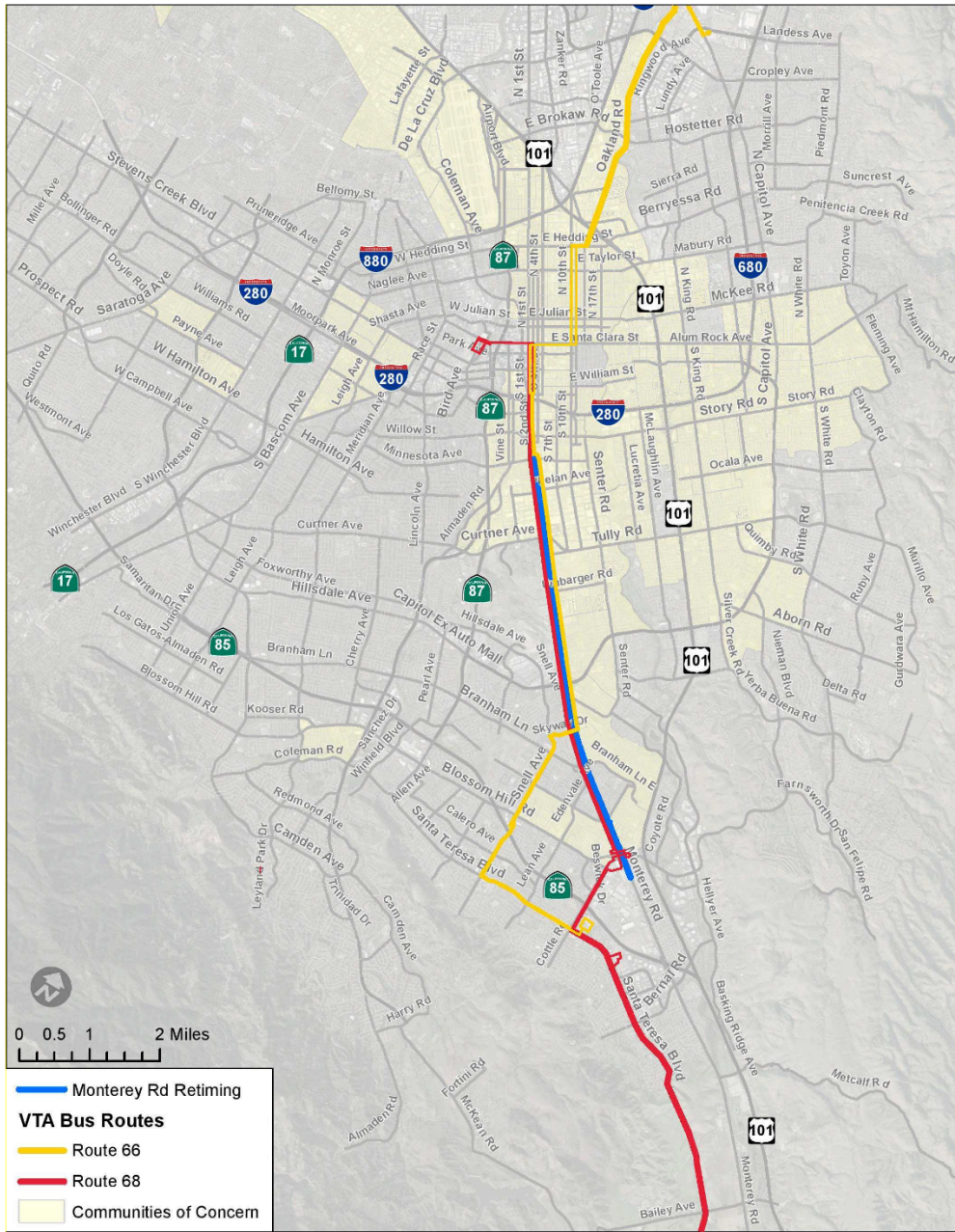


EXHIBIT A-4

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

Task Name	Planned Start Date	Planned Finish Date
1. Contract Start	9/9/2022	9/9/2022
Task 1 Milestone: NTP & Kick-off Meeting*	9/9/2022	9/9/2022
Review PMP and Project Schedule	9/9/2022	9/9/2022
2. Planning	9/12/2022	12/2/2022
Verify traffic signal interconnect	9/12/2022	10/21/2022
Collect 2 months of VTA data for route 66 & 68	9/12/2022	12/2/2022
Verify CAD/AVL functionality	9/12/2022	9/29/2022
Verify Integration with INIT	9/12/2022	9/29/2022
Verify VTA bus data	9/30/2022	11/28/2022
Develop preliminary design	9/30/2022	11/28/2022
Develop business rules	9/30/2022	10/19/2022
Develop performance expectation operation	9/30/2022	10/19/2022
Develop Integration plan and design	9/30/2022	10/19/2022
Agency review of preliminary design/Implementation and Verification Plan	10/20/2022	11/17/2022
Task 2 Milestone: Finalize preliminary design memo and Implementation/Veri...	11/18/2022	11/28/2022
3. Final Delivery	11/29/2022	1/17/2023
Configure/Input signal data	11/29/2022	12/7/2022
Verify expectations of operations and performance	12/8/2022	12/16/2022
Task 3 Milestone: Verification testing, San Jose review, and IT Sign-off*	12/19/2022	1/16/2023
Task 4 and 5 Milestone: Training and Documentation*	1/17/2023	1/17/2023
4. Execution	1/17/2023	5/22/2023
System integration, deploy and monitor route 66	1/17/2023	2/27/2023
System integration, deploy and monitor route 68	2/28/2023	4/10/2023
System integration deploy and monitor Downtown route	4/11/2023	5/22/2023
5. Final System Acceptance	5/23/2023	6/1/2023
Validate user access	5/23/2023	5/23/2023
Provide equipment list, user and maintenance manuals, and as-built drawings	5/23/2023	5/23/2023
Final acceptance and sign-off*	5/24/2023	6/1/2023

EXHIBIT A-5
FINAL SOLUTION ACCEPTANCE CERTIFICATE

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

FINAL SOLUTION ACCEPTANCE CERTIFICATE

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

Project Name: Centralized Transit Signal Priority Solution

This Final Solution Acceptance Certificate memorializes the occurrence of Final Solution Acceptance.

Contractor and the City acknowledge that:

1. Contractor has delivered the Solution, Software, Services, and documentation promised under this Agreement.
2. The Solution is accepted, and all punch list items generated during testing have been complete.
3. By acknowledging the Final Acceptance of the Solution, the City agrees to pay any remaining and approved outstanding invoices to Contractor, including previously withheld retainage.

City of San José (“City”)

SinWaves, Inc. dba LYT (“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 **Five Hundred Thousand Dollars (\$500,000)** during the five-year Initial Term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2 Progress payments shall be made to Contractor by City based on net thirty (30) days payment terms, following 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 of the deliverables as set forth for each milestone. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the milestone for which payment is due.
- 1.3 Payment for any 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 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 Implementation Invoicing Procedure: Contractor will invoice the City upon completion of each milestone but not more frequently than monthly.
- 2.4 In the event of termination of this Agreement for any reason, Contractor shall refund to City on a pro-rated basis any prepaid amounts for software licenses/subscriptions, support, and maintenance from the date of termination through the end of the Agreement term.
- 2.5 The City agrees to compensate Contractor for the Services performed and the Software and software customizations 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: Payment Schedule

Implementation	Deliverable	Estimated Completion Date	Amount Due*
Task 1: Project Management	Kick-Off Meeting		\$0
Task 2: Solution Deployment	Project Implementation Plan, Controller Transit Signal Priority Data Specifications, Requirements for Field Communications, Installation of Solution-related, Non-field Equipment, Solution Architecture and Design Document, and All Necessary Hardware and Services Required to Design, Develop, Configure, Deploy, and Maintain the Solution.		29,280
Task 3: Verification Plan/Final Acceptance Development	Draft and Final Version of Verification Plan		4,000
Task 3: Verification Testing	Completed Verification Test of Centralized Transit Signal Priority Solution per the Final Verification Plan		4,000
Tasks 4 and 5: Training and Documentenation Development	Training and Solution Documentation		0
Final Solution Acceptance	Payment of 20% retainer		7,200
TOTAL IMPLEMENTATION NOT TO EXCEED			\$55,600

Ongoing Costs (5-Year Term)	Amount
Software Licenses/Subscriptions	\$344,400
Ongoing Support and Maintenance	100,000
ONGOING COSTS NOT TO EXCEED	\$444,400

TOTAL CONTRACT NOT TO EXCEED (FOR 5-YEAR TERM)	\$500,000
-------------------------------------------------------	------------------

All amounts stated above are in United States Currency.

*The signed Final Solution Acceptance Certificate (Exhibit A-5) triggers payment of the 20% retainer.

3 ADDITIONAL SERVICES

- 3.1 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.
- 3.2 Supplemental professional service rates shall not exceed the following during the five-year Initial Term:

Additional Services	Hourly Rate
Project Management	\$200
Business Analyst	\$250
Software Developer	\$250
Report Development	\$145
On-Site Training	\$187.50

Additional Services	Fixed Rate
Implementation of Solution at One Additional Intersection	\$850

- 3.3 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 specified above and must be good for at least ninety (90) days.
- 3.4 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.

I. 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>\$4,000,000 per occurrence for bodily injury, personal injury and property damage.</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>\$4,000,000 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: \$1,000,000 each accident/ each employee injury by disease</p>
<p>4 Technology Errors and Omissions Including coverages for negligent acts, errors, or omissions arising from professional services provided under this contract.</p>	<p>Not less than \$1,000,000 each claim and annual aggregate.</p>
<p>5 Cyber Liability Data recovery and privacy liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering products provided under this agreement. 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 claim and annual aggregate.</p>

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

II. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager.

III. Other Insurance Provisions

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

- 1. General Liability and Automobile Liability Coverages**
 - a. 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.
 - b. The Santa Clara Valley Transportation Authority, 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.
 - c. 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.
 - d. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
 - e. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Santa Clara Valley Transportation Authority, its officials, employees, or agents.
 - f. 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.
 - g. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.
 - h. Coverage shall contain a waiver of subrogation in favor of the Santa Clara Valley Transportation Authority, its officials, employees, and agents.
- 2. Workers' Compensation and Employers Liability**
 - a. Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.
 - b. Coverage shall be endorsed to state carrier waives its rights of subrogation against the Santa Clara Valley Transportation Authority, its officials, and agents.
- 3. Claims Made Coverages**

If coverage is obtained on a "claims made" policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.
- 4. 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.

IV. Acceptability of Insurance

Insurance is to be placed with insurers with an A.M. Best Financial Strength Rating of A, Size Category VII or better.

V. Verification of Coverage

Contractor shall furnish the City with certificates of insurance and with 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 emailed in pdf format to riskmgmt@sanjoseca.gov:

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

Proof of insurance shall be mailed to the Santa Clara Valley Transportation Authority:

Certificate Holder
Santa Clara Valley Transportation Authority
3331 North First Street
San José, CA 95134-1906

VI. Subcontractors

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

EXHIBIT E

CONTRACTOR END USER LICENSE AGREEMENT

This Contractor End User License Agreement (“License Agreement”) is Exhibit E to the Centralized Transit Signal Priority Solution Agreement (“Agreement”) entered into between the City of San José and SinWaves, Inc. dba LYT.

For purposes of this Exhibit E, the term “Customer” shall have the same meaning as “City” as referenced in the Agreement.

For purposes of this Exhibit E, the term “LYT” shall have the same meaning as “Contractor” as referenced in the Agreement.

This End User License Agreement (“**EULA**” or “**License Agreement**”), including the Software Maintenance Agreement (“**Maintenance Agreement**”) which is attached hereto as Exhibit E-1 and incorporated herein by reference, is entered into between **SinWaves, Inc.**, a Delaware Corporation with its principal offices in San José, California (hereinafter “**LYT**” or “**we**”) and the City of San José, a municipal corporation with its principal offices in San José, California (“**Customer**” or “**you**”). If Customer does not accept this License Agreement, Customer must return the Product(s) to LYT or its authorized solution partner prior to installation or use for a refund.

1. **DEFINITIONS**

“**Agreement**” means the Centralized Transit Signal Priority Solution Agreement (“Agreement”) entered into between the City of San José and SinWaves, Inc. dba LYT

“**API**” means application programming interface.

“**Documentation**” means user documentation provided by LYT for Software, Hardware, or Services, in print, online, embedded as part of a help function, or in license files, “read me” files, header files, or similar files. Documentation includes license specifications, technical specifications, API information, and instructions for use.

“**Hardware**” means hardware equipment, devices, accessories, and parts delivered by LYT hereunder, including firmware incorporated therein.

“**Maintenance Services**” means Product maintenance, enhancement, and technical support services provided by LYT.

“**Purchase Order**” or “**Order**” means a Customer’s Purchase Order that references a LYT quote or ordering document and includes a statement of work (SOW) as applicable, incorporates the terms of this License Agreement, and sets forth the Products and Services ordered by Customer and any associated fees.

“**Products**” means Software, Documentation, and any other products listed in any Products and Price and Price List that LYT may make available from time to time.

“**Services**” means Software Support and Maintenance Services.

“**Software**” means software licensed by LYT to Customer hereunder, including updates, modifications, design data, and all copies thereof. Software includes associated APIs, as well as scripts, toolkits, libraries, reference or sample code, and similar materials.

“**LYT IP**” means all patents, copyrights, trade secrets, and other intellectual property rights in or related to Products or Services.

“**Supplemental Terms**” means the terms and conditions of the Agreement.

2. **INTENTIONALLY OMITTED.**

3. **SOFTWARE LICENSE AND PRODUCT MAINTENANCE SERVICES TERMS**

3.1 **License Grant and Conditions.**

- (a) **License Grant.** LYT grants Customer a nonexclusive, nontransferable, limited license to install and use Software, Hardware, and related Documentation for Customer's internal business purposes for the time period specified in the Agreement or as extended through subsequent Purchase Orders issued by Customer, and subject to any applicable Supplemental Terms. Software is the trade secret of LYT or its licensors. Customer may copy Software only as required to support the authorized use. Each copy must include all notices and legends embedded in Software and affixed to its medium or container as received from LYT. LYT or its licensors retain title to and ownership of Software and LYT IP. LYT reserves all rights in Products and LYT IP not expressly granted herein.
- (b) **License Compliance.** LYT reserves the right to embed a reporting mechanism in Software to determine unauthorized use of licenses. The mechanism does not transmit technical or business data that Customer processes with Software.
- (c) **Third-Party and Open-Source Software.** Products may contain third-party technology, including open-source software ("**Third-Party Technology**"). Third-Party Technology may be licensed by third parties under separate terms ("**Third-Party Terms**"). Third-Party terms are specified in the Documentation and control solely with respect to Third-Party Technology. If Third-Party Terms require LYT to furnish Third-Party Technology in source code form, LYT will provide it upon written request and payment of any shipping charges. LYT will use commercially reasonable efforts to provide reasonable notice of any suspension or termination of Third-Party Technology and will use commercially reasonable efforts to provide access to similar content where necessary to maintain your uninterrupted use of the Product.
- (d) **Promotional Rights.** LYT is authorized to include Customer's name on its client list. Any additional promotional activities must be pre-approved in writing by an authorized Customer representative.

3.2 **Maintenance Services Terms.** Maintenance Services are governed by the terms attached as Exhibit "E-1" and incorporated herein by reference.

3.3 **Customer Responsibilities.**

- (a) **Transfer and Remarketing of Software.** Unless otherwise provided in this License Agreement or required to be permitted by applicable law, Customer will not cause or permit the transfer, loan, lease, publication, or use of Software to any third party without the prior written consent of LYT.
- (b) **Reverse Engineering, Modification, Use of APIs.** Customer will not reverse engineer, decompile, or otherwise attempt to discover the source code of Software. Customer will use Software provided in source code form only to modify or enhance Software for its authorized use. Customer will not otherwise modify, adapt, or merge Software. Customer will not subject Software to any open-source software license that conflicts with this Agreement or that does not otherwise apply to such Software. Customer will not use Software for the purpose of developing or enhancing any product that is competitive with Software. Customer will only use APIs identified as published in the Documentation and only as described therein to support the authorized use of Software. The restrictions set out in this Section do not apply to the extent they conflict with mandatory applicable law.
- (c) **Intentionally omitted.**
- (d) **Security.** Customer is responsible for the security of Customer's systems, including physical security, and Customer's data on Customer's systems. Customer will take commercially reasonable steps to exclude malware, viruses, spyware, and Trojans from its own systems

and data if on Customer's systems.

- (e) **Third-Party Claims.** Customer acknowledges that LYT does not control Customer's processes, sale, or use of Customer's products. LYT will not be liable for any claim or demand against Customer by any third party relating to the process, sale, or use of Customer's products, except for LYT's obligations to indemnify Customer against infringement claims and its general limitations of liability pursuant to section 5, below.
- (f) **Host Identifier.** Customer will provide LYT with sufficient information, including the host identifier for each workstation or server upon which the license management portion of Software will be installed, for LYT to generate a license file enabling Software access per the scope of the licenses granted under the Agreement or Customer-issued Purchase Order.
- (g) **Audit.** Customer will at all times maintain records identifying Software, the location of each copy thereof, and the location and identity of workstations and servers on which Software is installed. LYT may, during regular business hours and upon reasonable advance notice, conduct an audit of Customer's compliance with this License Agreement. Customer will permit LYT or its authorized agents to access facilities, workstations, and servers and take all commercially reasonable actions to assist LYT in determining compliance with this License Agreement. LYT and its agents will comply with reasonable security regulations while on Customer's premises.

4. WARRANTIES AND DISCLAIMERS

- 4.1 Original IP.** LYT warrants that nothing in the LYT IP, nor Customer's use of the LYT IP, will infringe, or constitute a misappropriation of, the Intellectual Property rights of a third party.
- 4.2 Defects.** LYT warrants that the Software will provide the material features and functions described in the Documentation, subject to Customer renewal of ongoing maintenance and support. LYT's entire liability and Customer's exclusive remedy for a breach of this warranty will be, at LYT's option, to correct or work around errors, or replace defective Software or refund license fees paid for defective Software returned by Customer.
- 4.3 Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LYT EXPRESSLY DISCLAIMS ALL WARRANTIES RELATING TO THE SERVICE OFFERING OR TO ANY MATERIALS OR SERVICES PROVIDED TO YOU UNDER THE AGREEMENT, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF TITLE, LYT DOES NOT WARRANT THAT THE SERVICE OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS, OR THAT THE SERVICE OFFERING WILL MEET (OR IS DESIGNED TO MEET) YOUR BUSINESS REQUIREMENTS. WE DO NOT COMMIT TO FIXING ALL ERRORS.

5. LIMITATION OF LIABILITY AND INDEMNIFICATION

- 5.1 Limitation of Liability.** THE ENTIRE, COLLECTIVE LIABILITY OF LYT FOR ALL CLAIMS AND DAMAGES RELATED IN ANY WAY TO THIS LICENSE AGREEMENT, IN THE AGGREGATE AND REGARDLESS OF THE FORM OF ACTION, WILL BE FOUR MILLION DOLLARS (\$4,000,000) FOR THE SOFTWARE LICENSE, HARDWARE, OR SERVICE THAT GAVE RISE TO THE CLAIM. THE FOREGOING LIMITATION DOES NOT APPLY TO LYT'S INDEMNITY OBLIGATION IN SECTION 5.2 OR CLAIMS RESULTING FROM DEATH, BODILY INJURY, OR PROPERTY DAMAGE. IN NO EVENT WILL LYT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOSS OF PRODUCTION, INTERRUPTION OF OPERATIONS, OR LOST DATA OR PROFITS, EVEN IF SUCH DAMAGES WERE FORESEEABLE. THIS CLAUSE SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR FRAUD OR CRIMES ARISING OUT OF THE AGREEMENT AS PERMITTED UNDER ANY APPLICABLE FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT (31

U.S.C. 3729-3733).

5.2 Intellectual Property Infringement Indemnity.

- (a) **Infringement Claim Indemnity.** LYT will indemnify, defend, and hold harmless, at its expense, any action brought against Customer for any claim that any Product infringes any copyright, any trade secret, or a patent or trademark issued or registered by the United States, and will pay all damages finally awarded against Customer by a court of competent jurisdiction or agreed in a settlement, provided that Customer gives LYT (i) prompt written notice of the claim, (ii) all requested information and reasonable assistance related to the claim, and (iii) sole authority to defend or settle the claim. LYT will not admit liability or incur obligations on Customer's behalf without Customer's prior written consent, which shall not be unreasonably withheld.
- (b) **Injunction.** If a permanent injunction is obtained against Customer's use of a Product, LYT will obtain for Customer the right to continue using the Product or will replace or modify the Product to become non-infringing. If such remedies are not reasonably available, LYT will refund the fees paid for the enjoined Product for the remainder of the license term or, at LYT's discretion, amortized over 60 months from the initial delivery of Hardware or a perpetual license and accept the return of the Product. LYT may, in its sole discretion, provide the remedies specified in this Section to mitigate infringement prior to the issuance of an injunction.
- (c) **Exclusions.** Notwithstanding anything to the contrary herein, LYT will not have any liability or indemnification obligation to Customer to the extent that an infringement claim arises out of (i) use of a prior version of the Product to the extent that a current version is non-infringing, (ii) failure to use a correction, patch, or new version of the Product offered by LYT to Customer as a replacement that performs substantially the same functions, (iii) use of the Product in combination with software, equipment, data, or products not provided by LYT when such use is the cause of the infringement claim, (iv) use of a Product that is designated as retired or not generally supported as of the date of the Order, or (v) any adjustment, modification, or configuration of a Product not made by LYT.
- (d) **Sole and Exclusive Remedy.** Section 5.2 sets forth the sole and exclusive liability of LYT to Customer for infringement of third-party intellectual property rights.

6. TERMINATION

- 6.1 Termination by LYT.** Licenses for a limited term terminate upon expiration of the term subject to the Agreement or Customer-issued Purchase Order. Subject to and to the extent not prohibited by 41 U.S.C. chapter 71 (Contract Disputes) and FAR 52.233-1 (Disputes), LYT may terminate the Agreement if it is determined (i) that you failed to comply with the terms of the Agreement (ii) in order to comply with the law or requests of governmental entities, or (iii) for any other breach that remains uncured after 30 days' notice thereof.
- 6.2 Termination by Customer for Cause or Convenience.** Customer may terminate the License Agreement effective immediately upon written notice to LYT if we (a) commit a breach of the License Agreement and fail to cure within 30 days of notice of the breach, (b) commit a material breach of the License Agreement that cannot be cured, or (c) terminate or suspend our business. Customer may also terminate this License Agreement for convenience and without cause with 30 days' written notice to LYT.
- 6.3 Effect of Termination.** Upon expiration of the Agreement or termination of the Agreement as provided above: (a) all rights granted to you under the License Agreement, including your ability to use LYT Products, will be terminated; (b) you must promptly discontinue your use of the Service Offering and delete or destroy any LYT or our licensors' Confidential Information in your possession and certify such removal and destruction in writing to LYT; and (c) LYT will refund any prepaid fees paid by Customer.

6.4 Sections 2.3, 2.4, 4.2, 5.1, 6.3, 7, 8 and 9.8 shall survive termination of this Agreement.

7. **EXPORT COMPLIANCE**

- 7.1 **Export.** LYT's obligations under this Agreement are conditioned upon Customer's compliance with, and Customer agrees to comply with, all applicable export and re-export controls, embargoes, and economic and trade sanctions laws and regulations, including in any event those of the United States and the European Union ("**Export Laws**"). Customer represents that any Products and Services provided hereunder and any derivatives thereof will not be (i) downloaded or accessed by a Sanctioned Person, (ii) exported, re-exported (including any 'deemed exports'), shipped, distributed, delivered, sold, resold, supplied, or otherwise transferred, directly or indirectly, to any Sanctioned Person or otherwise in a manner contrary to the Export Laws, (iii) used for any purpose prohibited by the Export Laws, or unless expressly authorized by LYT in writing, (iv) used for non-civilian purposes (e.g. armaments, nuclear technology, weapons, any other usage in the field of defense and military). Without limiting the foregoing, Customer represents and warrants that (i) it is not a Sanctioned Person, and (ii) it will not download or otherwise access, or facilitate a third party's download or access of, any Product or Services from a Sanctioned Country. Customer will, at least once per year, review and update its list of users who have access to a Product or Services and confirm that no such user is a Sanctioned Person and that all such users may continue to access Products and Services in compliance with Export Laws. LYT may conduct the necessary Export Laws checks and, upon request, Customer will promptly provide LYT with any necessary information. "**Sanctioned Country**" means a country or territory that is itself the subject or target of any comprehensive trade or economic sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine). "**Sanctioned Person**" means any person (i) listed in the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Department of Treasury's Office of Foreign Assets Control or in any Export-Control-Related list of designated persons maintained by the U.S. Department of Commerce, the U.S. Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, or the United Kingdom; (ii) operating, organized, or resident in a Sanctioned Country; (iii) the government of, or acting for or on behalf of the government of, Venezuela or a Sanctioned Country; or (iv) owned or controlled by one or more such persons.
- 7.2 **Information Disclosure.** If Customer discloses to LYT any information that is (i) Covered Defense Information or Controlled Unclassified Information as defined in U.S. Government regulations or (ii) subject to Export Laws that require controlled data handling, Customer will notify LYT personnel in advance of each instance of disclosure and will use the notification tools and methods specified by LYT.
- 7.3 **Remedies, Indemnification.** In the event that Customer fails to comply with any provision of Section 7 or violates any Export Laws in connection with Products or Services, LYT will have the right to take action in accordance with the terms of this License Agreement and as required by U.S. law or the applicable law.
- 7.4 **Impediments.** LYT will not be obligated to perform under this License Agreement if such performance is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions including, but not limited to, embargoes or other sanctions imposed by the United Nations, the European Union, or the United States.

8. **CONFIDENTIALITY AND DATA PROTECTION**

- 8.1 **Confidential Information.** "**Confidential Information**" means all information disclosed by one party or any of its affiliates to the other party under this Agreement that is marked as confidential. LYT Confidential Information includes Products, Services, LYT IP, and any information

Customer derives from benchmarking the Products or Services. The receiving party will (i) not disclose Confidential Information, except on a need-to-know basis to its employees, affiliates' employees, consultants, contractors, and financial, tax and legal advisors; and with respect to the use of Products solely as authorized by the agreed license terms, (ii) use and copy Confidential Information only as required to exercise rights or perform obligations under this License Agreement, and (iii) protect Confidential Information from unauthorized use or disclosure. The receiving party (i) will ensure that all its recipients of Confidential Information are bound by confidentiality obligations and use restrictions at least as restrictive as those herein, and (ii) will be liable for compliance with this Section by each of its recipients.

8.2 Non-Solicitation. During the term of service between LYT and Customer, and for a period of one year thereafter, neither party will solicit for employment any employees, agents, or subcontractors of the other party or its affiliates who, within three months prior to such solicitation, had contact with the soliciting party based in whole or in part upon the scope of this Agreement. The restrictions in this section shall be deemed not to apply to general solicitations for employment posted on Internet job sites or printed in newspapers or trade or professional journals.

8.3 Exclusions. The foregoing confidentiality obligations will not apply to any Confidential Information that (i) is or becomes generally available to the public other than as a result of disclosure by the receiving party in violation of this Agreement; (ii) becomes available to the receiving party from a source other than the disclosing party, provided that the receiving party has no reason to believe that such source is itself bound by a legal, contractual, or fiduciary obligation of confidentiality; (iii) was in the receiving party's possession without an obligation of confidentiality prior to receipt from the disclosing party; (iv) is independently developed by the receiving party without the use of, or reference to, the disclosing party's Confidential Information; (v) is subject to disclosure under the California Public Records Act (Cal. Govt. Code Section 62500 et seq.); or (vi) is required to be disclosed by any other governmental agency or law, so long as the receiving party promptly provides the disclosing party with written notice of the required disclosure, to the extent such notice is permitted by law, and cooperates with the disclosing party to limit the scope of such disclosure.

8.4 Intentionally omitted.

9. ADDITIONAL TERMS AND CONDITIONS

9.1 LYT Affiliates. Companies directly or indirectly owned or controlled by LYT's ultimate parent company may exercise LYT's rights and fulfill LYT's obligations under this License Agreement. LYT remains responsible for its obligations hereunder.

9.2 Assignment. Except to the extent transfer may not legally be restricted, you must not assign this License Agreement or any right or obligation hereunder, or delegate any performance, without our prior written consent, which consent will not be unreasonably withheld. Additionally, LYT shall notify Customer in writing at least 90 days in advance of assigning its rights and responsibilities under this License Agreement. Customer may choose at that time to terminate the License Agreement in accordance with Section 6, and LYT shall refund to Customer any prepaid fees. Any attempted assignment or transfer in violation of the foregoing will be void.

9.3 License Rights Applicable to the U.S. Government. Products and Services are commercial products that were developed exclusively at private expense. If Products or Services are acquired directly or indirectly for use by the U.S. Government, then the parties agree that the Products and Services are considered 'Commercial Items' and 'Commercial Computer Software' or 'Computer Software Documentation', as defined in 48 C.F.R. §2.101 and 48 C.F.R. §252.227-7014(a)(1) and (a)(5), as applicable. Software and Documentation may only be used under the terms and conditions of this Agreement as required by 48 C.F.R. §12.212 and 48 C.F.R. §227.7202. The U.S. Government will only have the rights set forth in this Agreement, which supersedes any conflicting terms or conditions in any government order document, except for provisions which

are contrary to applicable mandatory federal laws. LYT will not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.

9.4 Feedback. If Customer provides any ideas regarding the Products (inclusive of LYT services), including suggestions for changes or enhancements, (collectively “**Feedback**”) LYT may use that feedback without restriction, and you hereby irrevocably assign to us all right, title, and interest in and to that feedback. Subject to the preceding sentence regarding any feedback you provide, providing any comments and suggestions does not grant us any rights in your content or your intellectual property.

9.5 Force Majeure. Neither party will be liable for delay or failure to perform due to any cause beyond its reasonable control, which could not have been prevented by good industry practice, provided the delayed party promptly notifies the other party.

9.6 Notices.

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

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.

To Whom Given: All notices and other communications between the Parties required or permitted to be given under this License 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: SinWaves, Inc. dba LYT
 Attention: Timothy S. Menard
 3080 Olcott Street, Suite D125
 Santa Clara, CA 95054
 (650) 564-4827
 tim@lyt.ai

Changing Contact Information: Either Party may change its contact information for receiving written notices and communications regarding the License Agreement by providing notice of such change to the other Party pursuant to this Section 9.6.

9.7 Governing Law and Jurisdiction. If you are a federal government entity, the License Agreement is governed by the applicable federal laws of the United States. If the federal laws of the United States are not dispositive, then to the extent permitted by federal law, the Agreement will be governed by the laws of the State of California, excluding its conflict of law principles. If you are a state or local government entity, the License Agreement is governed by the laws of your state, excluding its conflict of laws principles. The License Agreement does not affect statutory rights that cannot be waived or changed by contract.

9.8 No Waiver; Validity and Enforceability. The failure to enforce any provision of this License

Agreement will not be construed as a waiver of such provision. If any provision of this License Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected, and such provision will be deemed restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

- 9.9 Entire Agreement.** This License Agreement constitutes the full and complete agreement between the parties with respect to the terms of use of the Software and supersedes any previous or contemporaneous agreements or communications, whether written or verbal, relating to such subject matter. This License Agreement may not be varied other than in writing by manual signatures or electronic signatures of authorized representatives of both parties.
- 9.10 Order of Precedence.** Your use of LYT Products is subject to the License Agreement to the extent that all such terms and conditions are consistent with federal law and regulations that are applicable, mandatory, and controlling. To the extent terms and conditions of the License Agreement are inconsistent with federal law and regulations that are applicable, mandatory, and controlling (see FAR 12.212(a)), they are deemed deleted and unenforceable as applied to any Purchase Orders. In the event of a conflict between the Agreement, License Agreement, and any Purchase Order issued by the City, the order of precedence shall be the Agreement, the City-issued Purchase Order, and then this License Agreement.

City of San José
a municipal corporation

SinWaves, Inc. dba LYT
a Delaware corporation
authorized to conduct business in California



By Email: luz.cofresi-howe@sanjoseca.gov
Date: 08/14/2022 GMT
Luz Cofresi-Howe
Assistant Director, Finance



By Email: tim@lyt.ai
Date: 08/11/2022 GMT
Timothy Menard
Founder/CEO

APPROVED AS TO FORM:



Email: diana.yuan@sanjoseca.gov
Date: 08/12/2022 GMT
Diana Yuan
Deputy City Attorney



By Email: dustin@lyt.ai
Date: 08/12/2022 GMT
Dustin Harber
Chief Technology Officer

EXHIBIT E-1

CONTRACTOR SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement (“**Maintenance Agreement**”) is Exhibit E-1 to Exhibit E License Agreement. All Maintenance Services for Software provided under the License Agreement are governed by these General Maintenance Services Terms (“**General Maintenance Terms**”). LYT may modify these Maintenance Services terms from time to time, provided however that LYT provides Customer of at least 90 day’s advanced written notice of such modifications and that any modifications are effective only upon Customer’s renewal of Maintenance Services whether standalone or as part of a Subscription; changes cannot take effect during the then-current period of Maintenance Services or during any period for which Customer has prepaid without Customer’s express written agreement. Capitalized terms have the meaning as defined elsewhere in the License Agreement.

- 1. BASIC MAINTENANCE SERVICES.** Maintenance Services consist of (a) Software updates, (b) Error corrections (as defined below), and (c) technical support. Maintenance Services will be available hereunder to the extent that LYT makes such services available to its customer base in general. Products provided at no fees or that are designated as retired, discontinued, obsolete or legacy are not covered by any Maintenance Services, unless explicitly specified otherwise on a LYT ordering document or quote that is referenced in a Customer-issued Purchase Order or in the Agreement, e.g., by reference to End-of-Life Maintenance Services or Extended Maintenance Services.
- 2. ADDITIONAL AND OPTIONAL MAINTENANCE SERVICES.** For certain Products, additional support levels and services may be available for purchase as specified by LYT, including enhanced support levels and optional services as specified in LYT’s Product and Price List.
- 3. MAINTENANCE TERM.** General Maintenance Services from LYT are included in all LYT product annual license fees. General Maintenance Services will continue until such time as the license expires or is otherwise terminated by either party for any reason, or if the Product is retired, discontinued, obsolete or legacy.
- 4. NEW RELEASES OF SOFTWARE.** New versions of the Software may be either a point release which generally consists of Error corrections (“**Point Release**”), or a major release which generally is a new version of the Software that contains new or enhanced functionality (“**Major Release**”). As part of Maintenance Services, Customer will receive new Point Releases and Major Releases as released to LYT’s customers in general. This right does not extend to any release, module, option, future product, or any upgrade in functionality or performance of the Software which LYT develops as a customized product for a single customer or that LYT develops and licenses as a separate product. To the extent commercially practicable and provided that Customer provides LYT with reasonable access to all of Customer’s 3rd party systems and licenses which need to be integrated, LYT will ensure compatibility and configuration of its Products as part of Customer’s subscription.
- 5. MAINTENANCE OF PRIOR VERSIONS OF THE SOFTWARE.** At any point during the Customer’s subscription term, LYT implements a Point Release or Major Release, LYT will maintain the current version and the most current Point Release that relates to the immediately preceding Major Release. If an Error has been corrected in an update to the prior Major Release, LYT may require the Customer to upgrade to the Point Release that contains the Error correction rather than providing a separate patch or workaround.
- 6. EXTENDED AND END OF LIFE MAINTENANCE SERVICES.** At LYT’s sole discretion, LYT may substitute products with similar functionality and features for any discontinued Software at no additional charge to Customer. LYT does not currently offer Extended Maintenance Services support for Products following the expiration of the term of the agreement or following substitution of a LYT product under this provision.

7. **ERROR CORRECTIONS.** An Error means the failure of the Product to conform substantially to the Product Documentation (“**Error**”). Customer may report any suspected Error to LYT by email, by phone, or by LYT’s preferred method of initially documenting Customer issues through LYT’s customer support chat portal (available 24x7 online) and will provide LYT with a detailed written description and documentation of the suspected Error. Customer will cooperate with LYT’s investigation of the reported Error. If LYT finds that the Software contains an Error, LYT will use commercially reasonable efforts to correct the Error through a patch, workaround or via the next Point Release or Major Release of the Software, at the discretion of LYT.
8. **TECHNICAL SUPPORT (STANDARD OPERATIONS).** Customer may receive support by email, by phone, or by LYT’s preferred method of initially documenting Customer issues through LYT’s customer support chat portal (available 24x7 online) Standard Support Response is available Monday through Friday 7 am – 6 pm (PST & EST, respectively), with same-day acknowledgement by email if the request comes within the daily business hours. Response times vary depending on the severity of the issue and support is defined by Technical Support Level 0, Level 1, and Level 2 complexity and severity, with expected resolution based on the Level from within 30 minutes to up to 3 Business Days.
 - a. Technical Support Levels are defined as follows:
 - i. **Level 0** (or self-help) consists of the help section of the LYT portal, including how-to documentation, videos, and FAQs that allow for users to access and resolve information on their own rather than must contact a local Helpdesk or Service Desk for resolution.
 - ii. **Level 1** (L1) is the initial support level responsible for basic customer issues. This support level is generally used to record user requests, attend user’s phone calls, reply to emails, deal with signup issues, reset passwords, address profile, verification code, data export, and login issues faced by users, and basic troubleshooting using pre-formed questionnaires related to the issue. T1 is also responsible for delegating higher level customer support issues to T2 staff.
Level 1 requires LYT staff to have a thorough understanding of how to use the LYT web portal. They are trained to resolve known problems and to fulfill service requests.
 - iii. **Level 2** (L2) resolution of the difficult or advanced problems. High-end support and expert-level troubleshooting and analysis methods, including SPM/EVP/TSP malfunction/calibration, signal modeling issues, signal configuration, Maestro troubleshooting, and Maestro setup/configuration. Tier 2 specialists typically have the highest level of skills and often they are called as product specialists. This group may include the actual creators, engineers, or chief architects who designed and developed the product or service.
9. **TECHNICAL CONTACT.** LYT may require Customer to designate one or more employees as the technical contacts for Maintenance Services. The employee(s) will be trained on the applicable Products and will serve as the primary contact(s) for requesting and receiving Maintenance Services.
10. **VIRTUAL ACCESS.** If reasonably requested by LYT, Customer will allow LYT to perform Maintenance Services at Customer’s facilities or via remote screen-sharing technology.
11. **LIMITATION OF REMEDIES.** LYT’s exclusive responsibility and Customer’s sole and exclusive remedy for a failure to correct a fatal software Error (or an error that affects LYT’s core functionality) will be that Customer may terminate the subscription for the Product directly affected by the Error for the remainder of the then-current term for such Product, subject to any and all cancellation and refund restrictions or remedies contained in the subscription agreement.
12. **INITIAL AND RENEWAL FEES.** For direct orders by Customer to LYT, the fees for Maintenance Services will be set forth on the Order Form or may be reflected as part of the overall cost for the LYT subscription. LYT may increase its maintenance fees by giving notice to Customer

at least sixty (60) days prior to the expiration of the then- current term, provided pricing does not increase by more than the increase in Producer Price Index (PPI) final demand - WPUFD4 (<https://data.bls.gov/cgi-bin/surveymost?wp>) and does not exceed 3% over the previous year's fees. Customer must purchase Maintenance Services for all supported Products used at a single location.

- 13. THIRD PARTY MATERIALS.** LYT does not certify nor control the functionality or efficacy of third-party products integrated with LYT Products, whether or not LYT has integrated their Products in accordance with the third-party Documentation. Any other use of third-party products by Customer, whether as a stand-alone product or with the Products, has not been tested and is not certified by LYT. While LYT may assist Customer with the interoperability of third-party products with the Products, LYT has no obligation to support products acquired from a third party. Customer will ensure that LYT has the rights to use or access any third-party products or other third-party intellectual property made available to LYT by Customer as necessary for the performance of Maintenance Services.
- 14. UNSUPPORTED OPERATING ENVIRONMENT.** Maintenance Services apply only to the operation of the Products when used according to the Agreement and the applicable Product Documentation. LYT is not obligated to provide Maintenance Services for Products run on an unsupported platform or Products that have been modified by anyone other than LYT, LYT affiliates or LYT subcontractors at LYT's express direction. Supported configurations and hardware environments are described in the Product Documentation.
- 15. INTENTIONALLY OMITTED.**
- 16. DATA PROTECTION.** When LYT processes personal data on Customer's behalf in connection with Maintenance Services, the terms set out in the End User License Agreement are incorporated herein by reference and shall apply to the use of such Maintenance Services.

EXHIBIT F

INFORMATION TECHNOLOGY AND SECURITY REQUIREMENTS

The requirements below define additional City 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. Accessibility Requirements

Contractor's Services and Solution shall, at a minimum, comply with Level A/Level AA success criteria of the [Web Content Accessibility Guidelines](#) (WCAG), all applicable provisions of [Section 508 of the Rehabilitation Act](#) and the [Americans with Disability Act](#) (ADA), as amended, and the City's [Website and Digital Services Governance](#), as applicable.

2. Security Requirements

2.1 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.

2.2 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.

2.3 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.

2.4 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, in providing the services.

2.5 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 shared with City along with regular updates on risk mitigation.

2.6 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.

2.7 Incident Response

Contractor shall develop and maintain an incident response plan and contacts for providing notification, containing, eradicating, and recovering from a significant incident that impacts the operations of the City or the services the Contractor provides. The City may request a copy

and/or verbal explanation of the Contractor's incident response plan, and the Contractor must provide the requested materials/explanations within 30 days or request an extension in writing from the City.

2.8 Compromised Security

In the event that Data collected or obtained by the Contractor in connection with this Agreement is believed to have been compromised, lost, accessed by an unauthorized party, or otherwise breached as defined by NIST as a "data breach" (collectively "Data Breach"), Contractor shall notify the City immediately. Contractor shall investigate their systems of any suspected Data Breach in accordance with Contractor's incident response plan and report findings to the City. Contractor agrees to reimburse the City for any costs the City incurs to resolve potential breaches incurred due to the Contractor, including, where applicable, the cost of identifying and assisting individuals who may be impacted by the Contractor's breach, legal fees and fines associated with the data breach, and legal requirements issued by a local, state, or federal court.

2.9 Contingency Planning

Contractor shall develop and maintain a contingency plan for providing resiliency and redundancy to the Solution.