

**AGREEMENT BETWEEN
THE CITY OF SAN JOSE
AND
SMART WAVE TECHNOLOGIES, LLC
FOR AS-REQUIRED BROADBAND POINT-TO-POINT AND POINT-TO-
MULTIPOINT EQUIPMENT AND SERVICES**

This Agreement is entered into as the City’s execution date (“Effective Date”) between the City of San José, a municipal corporation (“City”), and Smart Wave Technologies, LLC, a Georgia limited liability company, 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 as-required broadband point-to-point (PTP) and point-to-multipoint (PTMP) equipment (the “Product(s)”) and professional services, including design, installation, configuration, implementation, training, and ongoing maintenance and support (collectively the “Services”); and

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

WHEREAS, Contractor proposed Products and Services in response to the RFP; and

WHEREAS, Contractor warrants that the proposed Products 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 - Sample Preliminary Project Implementation Schedule
- A-3 - Final Products and Services Acceptance Certificate
- EXHIBIT B - Compensation
- EXHIBIT C - Insurance Requirements
- EXHIBIT D - Change Order Form
- EXHIBIT E - Notice of Option to Extend Agreement
- EXHIBIT F-1 - Wage Requirements and Information
- F-2 - City of San José Classification Determination
- F-3 - Labor Compliance Addendum
- EXHIBIT G - Information Technology and Security Requirements
- EXHIBIT H - Work Order Form

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 June 30, 2023 (“Initial Term”), inclusive, subject to the provisions of Section 14 TERMINATION and subsection 2.2 “Options to Extend.”

2.2 Options to Extend

After the Initial Term, the City reserves the right, at its sole discretion, to extend the term of this Agreement for five (5) additional one-year terms (“Option Periods”) through June 30, 2028 for the as-required Products and Services. City shall provide Contractor written notice in the form of Exhibit E of its intention to exercise its option prior to the end of the then current term.

2.3 No Waiver

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

Notwithstanding this Section, the Parties agree that the sample preliminary project schedule set forth in Exhibit A-2, Sample Preliminary Project Implementation Schedule, 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 provide all Products 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 – A-2 and incorporated as though fully set forth herein on an as-required basis.

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 Information Technology and Security Requirements

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

3.4 Labor Compliance

This Agreement is subject to the City's Prevailing/Living Wage Policy and the applicable implementing regulations. Contractor shall comply with the provisions of the attached Labor Compliance documentation in Exhibit F-1 which sets forth Contractor's obligations with regard to this Policy.

4 WAGE THEFT

- 4.1 **Definition:** For purposes of this provision, "Wage Theft" means a final judgement, order, or other determination of a federal or state court, or of a federal, state, or local administrative agency that a contractor or subcontractor failed to pay its workers in accordance with any applicable federal, state, or local wage and hour laws, regulations, or other requirements. A judgement, order, or other determination is "final" if the contractor or subcontractor has exhausted all appeals, and the time period to appeal has expired.
- 4.2 **Compliance with Wage and Hour Laws:** The Contractor must comply with all applicable federal, state, and local wage and hour laws, regulations, and policies, as required by City Council Policy 0-44 <https://www.sanjoseca.gov/home/showdocument?id=12945>. The Contractor must include this requirement in each of its subcontracts.
- 4.3 **Representations in Wage Theft Disclosure Certification Forms:** The City awarded this Agreement to the Contractor, in part, based on the representations made by the Contractor and its listed subcontractors in the Proposal Certification or Wage Theft Disclosure Certification Form that they completed as part of the of procurement process.
 - 4.3.1 **Contractor Warranty:** By executing this Agreement, the Contractor affirms the accuracy of the representation it made in its Proposal Certification or Wage Theft Disclosure Certification Form. It is a material breach of this Agreement if the City determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.
 - 4.3.2 **Listed Subcontractors:** The Contractor must include in the subcontract of all subcontractors that it listed during the procurement, a provision that does the following:
 - 4.3.2.1 Requires the subcontractor to warrant the accuracy of the Proposal Certification or Wage Theft Disclosure Certification Form that it submitted during the procurement of this Agreement, and
 - 4.3.2.2 Allows the Contractor to terminate the subcontract if the City or the Contractor determines that the Proposal Certification or Wage Theft Disclosure Certification Form contained any material inaccuracies.
 - 4.3.3 **Termination of Subcontractor:** The Contractor must terminate a listed subcontractor if requested by the City based on the subcontractor's submittal of a

materially inaccurate Proposal Certification or Wage Theft Disclosure Certification form.

- 4.4 **Subcontractors Not Listed:** Before contracting with a subcontractor not listed during the procurement process, the Contractor will require the subcontractor to complete a Wage Theft Disclosure Certification Form provided by the City's Office of Equality Assurance through their website at <https://www.sanjoseca.gov/home/showdocument?id=64354>. The Contractor must provide the completed certification form to the City within ten (10) calendar days of executing the subcontract.
- 4.4.1 The Contractor cannot use any subcontractor that has one or more Wage Theft violations, or has one (1) outstanding, unpaid Wage Theft violation, within five (5) years before the date it certified the Wage Theft Disclosure Certification Form.
- 4.4.2 The Contractor must include a provision in each subcontract allowing the Contractor to terminate the subcontract based on the subcontractor's submission of a materially inaccurate Wage Theft Disclosure Certification Form. The Contractor must terminate a subcontractor if requested by the City based on the subcontractor's submittal of a materially inaccurate Wage Theft Disclosure Certification Form.
- 4.5 **Occurrence or Discovery of Wage Theft:** The Contractor must notify, in writing, the City's Office of Equality Assurance no more than fifteen (15) calendar days after either of the following events: (1) any Wage Theft that occurs during the term of the Agreement involving the Contractor or a subcontractor, and (2) the Contractor becomes aware of Wage Theft by the Contractor or a subcontractor that should have been previously disclosed but was not.
- 4.5.1 **Satisfaction by Contractor:** The Contractor must promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it. The Contractor must provide the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order, or other determination within five (5) calendar days of doing so.
- 4.5.2 **Satisfaction by Subcontractor:** The Contractor must include appropriate provisions in each subcontract requiring the subcontractor to do the following: (a) promptly satisfy and comply with a Wage Theft judgement, order, or other determination against it and (b) provide the Contractor and the City's Office of Equality Assurance with documentary evidence that it satisfied and complied with the Wage Theft judgement, order or other determination within five (5) calendar days of doing so.
- 4.5.3 **City's Right to Withhold Payment:** The City has the right to withhold any moneys owing the Contractor in the amount of the Wage Theft against the Contractor or a subcontractor.
- 4.6 **Material Breach:** Failure to comply with any part of this Section 4 constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.
- 4.7 **Notice:** Notice provided to the Office of Equality Assurance as required under this Section 4 shall be addressed to: Office of Equality Assurance, 200 East Santa Clara Street, 5th Floor, San José, CA 95113. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.

5 PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Contractor shall perform the Services according to the terms and provisions of the preliminary schedule set out in the attached Exhibit A-2, entitled "Sample 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 **One Hundred Sixty Thousand Dollars (\$160,000)** 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 PRODUCTS AND SERVICES ACCEPTANCE

Upon final delivery of the Products and Services, 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 – A-2). Final Products and Services Acceptance will occur upon successful completion of the acceptance tests. When Final Products and Services Acceptance occurs, the Parties will memorialize this event by promptly executing a Final Products and Services Acceptance Certificate (Exhibit A-3).

If, in the discretion of City, the Products and/or Services do not meet the requirements of the acceptance test specifications, City may (1) permit Contractor to repair or replace the Products so that the same meets the acceptance test specifications in all material respects, all at no additional expense to City or (2) return the Products to Contractor, at Contractor's expense and without liability to City, and any amounts paid by City for the Products 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 Products and Services Acceptance.

Payment for any part or parts of the Products 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 Products when delivered and reject upon notification to Contractor any and all of the Products which do not conform to the specifications or other requirements of this Agreement. Components of the Products 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 Products conform to the warranties, specifications, and other requirements of this Agreement. If City receives components of the Products 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 – A-2);
- 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 Products 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, Contractor warrants the Contractor Software for one (1) year from the date of Final Products and Services Acceptance in accordance with the terms and 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 Products and Services 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 – A-2). 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 Exhibit A-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.

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 Products 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: Smart Wave Technologies, LLC
Attention: Kevin Brangers - President
2662 Holcomb Bridge Rd #340
Alpharetta, GA 30022
770-356-0326
kevin.brangers@smartwave.us
- 30.4 Changing Contact Information: Either Party may change its contact information for receiving written notices and communications regarding the Agreement by providing notice of such change to the other Party pursuant to Section 30.

31 OTHER PUBLIC AGENCY PURCHASES

This Agreement resulted from a competitive bid through RFP PUR-RFP2021.07.10077 for As-Required Broadband Radio Links, Wireless RF, and Cellular Coverage Equipment and Services issued on July 8, 2021 pursuant to Chapter 4.12 of the San José Municipal Code. Other local and state government agencies may enter into agreement(s) based on the same material terms and conditions, and pricing. The local or state government agency shall accept sole responsibility for placing orders, arranging deliveries and/or services, and making payments to the Contractor. The City of San José will not be liable or responsible for any obligations, including but not limited to, financial responsibility in connection with these agreement(s) between the Contractor and other local and state government agency(ies).

32 MISCELLANEOUS

32.1 Survival of Provisions

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

32.2 Assignment

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

32.3 Headings

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

32.4 Counterparts

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

32.5 Use of Electronic Signatures

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

City of San José
a municipal corporation



Email: vijaykumar.uppin@sanjoseca.gov
Date: 09/28/2022 GMT

By _____

Vijaykumar Uppin

Senior Analyst, Finance

Smart Wave Technologies, LLC
a Georgia limited liability corporation
authorized to conduct business in California



Email: al.brown@smartwave.us
Date: 09/28/2022 GMT

By _____

Al Brown

CEO

APPROVED AS TO FORM:



Email: diana.yuan@sanjoseca.gov
Date: 09/28/2022 GMT

By _____

Diana Yuan

Deputy City Attorney

EXHIBIT A-1 SCOPE OF SERVICES

The following Scope of Services defines the principal activities and responsibilities of Contractor and the City for As-Required Broadband Radio Links Equipment and Services.

To the extent not inconsistent with the Agreement between the City and Contractor, City's Request for Proposal PUR-RFP2021.07.10077 (including all addenda and updates) issued on July 8, 2021, Contractor's proposal response dated August 11, 2021, and Contractor's Best and Final Offer (BAFO) response dated November 22, 2021, are incorporated herein by reference to provide context and supplemental information.

1 MINIMUM QUALIFICATIONS

Contractor must have and retain personnel with the certifications as specified below:

- 1.1 Certified Wireless Network Administrator / Professional (CWNA/CWNP) – Contractor shall maintain documentation demonstrating compliance with this qualification for the duration of this agreement.
- 1.2 Contractor's C-7 license for low voltage – Contractor shall maintain documentation demonstrating compliance with this qualification for the duration of this agreement. If Contractor elects to utilize a subcontractor, Contractor shall provide City's designated project manager with relevant information about the subcontractor and furnish documentation regarding subcontractor's C-7 license.
- 1.3 Tower climb safety – Contractor's staff must be properly trained and certified in tower climb safety (<https://www.osha.gov/sites/default/files/publications/OSHA3877.pdf>). Contractor must submit staff OSHA certifications demonstrating compliance with this requirement.

2 OVERALL ASSUMPTIONS AND PROCESS

- 2.1 Contractor shall provide a toolset and related professional services which the City may elect to use at its discretion.
- 2.2 Contractor shall assign a service/support representative who will be responsible for quoting City requests for as-needed products and services (within two weeks of City's request for quote), coordinating the execution of work orders, providing reports, and Contractor escalation management.
- 2.3 The representatives will meet as required to discuss requirements, progress, and quality of all services rendered or equipment supplied.
- 2.4 The City may request price quotes from multiple (or all) Contractors who are awarded a contract based on the services required. In such cases, the City will issue a Work Order to the lowest-priced Contractor.
- 2.5 Contractor shall not perform any work until directed to do so by the City through an executed Work Order. Any work performed by Contractor without an executed Work Order or other required contractual documents will be done at no cost to the City.
- 2.6 Contractor shall provide accurate and timely billing upon work completion and City acceptance of milestones and deliverables.

2.7 Contractor shall produce and send to City’s representative an accurate accounting of all open work orders and work progress at least monthly.

3 PROJECT STAFF

3.1 City’s Project Manager

| | |
|--|--------------------------------------|
| Name: James Castillo | Phone No.: (408) 793.6809 |
| Department: Information Technology | E-mail: james.castillo@sanjoseca.gov |
| Address: 200 East Santa Clara St, San José, CA 95113 | |

3.2 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: Dimi Atniel | Phone No.: 408-316-0013 |
| Address: 6985 Via Del Oro, #A-1 San José, CA 95119 | E-mail: dimi.atniel@smartwave.us |
| Other Staffing | |
| Name | Assignment |
| 1. Walter Orell | Project Engineer |
| 2. Nikolay Yumatov | RF Engineer |
| 3. Tony Solorzano | Installation Manager |

4 EXCLUSION

This Scope of Services does not include Wi-Fi equipment, support, maintenance, or related services unless explicitly mentioned or defined herein. Note that the City issues separate purchase orders for Ruckus Wi-Fi equipment, support, maintenance, and related services.

5 SECURITY AND OTHER REQUIREMENTS

- 5.1 Contractor agrees to perform the work set forth in this Agreement in accordance with the City’s Information Technology and Security Requirements, which are attached hereto as Exhibit G and incorporated herein.
- 5.2 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 may put the City, its residents, and businesses at risk.
- 5.3 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.

- 5.4 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's Information Technology Department 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.
- 5.5 Security Policy and Standards - Contractor shall adhere to City IT security policy and standards, as may be updated from time to time, in providing the services.
- 5.6 Security Controls - Contractor shall implement security controls in accordance with the City's Security Policy and Standards to assess any Products and Services prior to first release or release of any major improvement or enhancement.
- 5.7 Contractor shall protect City data in accordance with the City's Security Policy and Standards.
- 5.8 All City data provided to Contractor for the performance of the services specified herein is owned by the City and must be returned to the City upon contract termination.
- 5.9 Contractor's personnel working on sensitive information and/or in secured areas, may be required to submit to a background check or be required to be accompanied by a security escort. Certain Contractor personnel may be barred from working based on the results of the background check or other conditions may be required by the City of San José. The City will not disclose the details regarding why a particular worker is barred.
- 5.10 Contractor's personnel providing services to the City may be required by the City to sign individual confidentiality agreements and/or nondisclosure agreements.
- 5.11 Contractor must have its own equipment to provide the requested services.
- 5.12 Contractor and City shall meet as required for any requested services.
- 5.13 In the event the City needs to transition or discontinue services, Contractor shall work with the City to develop and enact a plan to do so.
- 5.14 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.

6 WARRANTY PERIOD

Contractor shall provide one-year warranty, including all equipment, parts, and services, for each new implementation to ensure that it is fully operational and meets all acceptance and usage criteria, with the option for ongoing technician dispatch for equipment repair or replacement on an as-needed basis.

Contractor's warranty shall include the following at a minimum:

- 6.1 Original equipment manufacturer support for all items installed;
- 6.2 Hardware, software, licensing, and monitoring support for the proposed wireless solution, including truck rolls and personnel dispatch;
- 6.3 Tier 1 phone and email support for the wireless network. Toll-free number or local number for phone support;
- 6.4 Provide (support) ticketing system for incident tracking for a minimum of one (1) year;
- 6.5 Provide response time based on the severity, or adhere to service levels as defined in Section 8, for all support calls to repair equipment with an on-site resource;

- 6.6 Provide a defined response time option in the event of emergency operations impacted by any broadband communications outage, which requires a faster response time as defined in Section 8 (with the understanding that there may be a higher cost for this option); and
- 6.7 Ability to purchase extended warranty at City’s option.

7 ONGOING MAINTENANCE AND SUPPORT

Following the one-year warranty period, Contractor shall provide ongoing maintenance and support services, as applicable and as requested, on an annual or per incident basis as determined by the City:

- 7.1 Technician/engineering dispatch, including truck rolls as required, for equipment repair or replacement;
- 7.2 Ongoing assessments and management of FCC license criteria and procedures and responses for any evaluation or assessment requests, as applicable. Assessments function as an audit of the City’s information systems processes, practices, and overall readiness. Assessments are expected to be conducted periodically throughout the term of the contract.
- 7.3 General technical support services during the City’s regular business hours of Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, excluding City holidays. City offices are closed to the public on Saturdays and Sundays, but the City’s technical staff conducts system maintenance work on these days to minimize any adverse impact to business operations during normal business hours. Therefore, the City may require that some services provided by Contractor be performed outside of regular business hours, including weekends and holidays.
- 7.4 Real-time, ongoing monitoring, alerting, and reporting for installed or existing radios to measure connectivity, quality of service, and usability.

8 SERVICE LEVEL REQUIREMENTS

| Severity Level | Definition | Maximum Response Time | Target Resolution Time |
|----------------|--|-----------------------|------------------------|
| Emergency | <ul style="list-style-type: none"> - Emergency operations networks/services - Department operations networks/services - Emergency operations unable to connect - No work-around available | 15 mins | 2 Hours |
| 1 | <ul style="list-style-type: none"> - Private corporate network access - City employees are unable to access the corporate network - Community centers providing emergency or disaster related services - No work-around or reliable redundancy available | 1 Hour | 4 Hours |

| Severity Level | Definition | Maximum Response Time | Target Resolution Time |
|----------------|--|-----------------------|------------------------|
| 2 | <ul style="list-style-type: none"> - Redundant links/equipment requiring repair - Persistent service degradation (e.g., unacceptable slow throughput performance) | 4 Hours | 8 Hours |
| 3 | <ul style="list-style-type: none"> - Non-emergency public access only - Redundancy only requires service - Partial, non-critical loss of functionality - Temporary work-around available | 24 Hours | Next Business Day |

9 BROADBAND POINT-TO POINT (PTP)/POINT-TO-MULTIPOINT (PTMP) REQUIREMENTS

- 9.1 **Equipment:** Contractor shall provide enterprise-grade, wireless broadband PTP and PTMP radio equipment options for high-capacity, high-speed backhaul links where physical fiber or leased lines are cost-prohibitive or physically limited. These solutions will utilize City assets, such as street poles or City-owned buildings, to extend wireless backhaul to City fiber locations.
- 9.2 Contractor's solution shall meet the following minimum requirements:
- 9.2.1 Licensed frequency in the 11 GHz or 18 GHz spectrum;
 - 9.2.2 Unlicensed frequency in the 5 GHz and 60 GHz spectrum;
 - 9.2.3 Compliance – FCC and European Telecommunications Standards Institute;
 - 9.2.4 100 Mbps to 10 Gbps (or higher) Internet Protocol (IP) aggregate throughput;
 - 9.2.5 Minimum two (2) network interfaces (one (1) copper small form-factor pluggable and one (1) fiber small form-factor pluggable) for network connectivity;
 - 9.2.6 Adaptive coding and modulation to provide link reliability in degraded channel conditions;
 - 9.2.7 Adaptive power control to provide automatic transmit power level increase on modulation downshift for improved system gain during fading;
 - 9.2.8 Power over Ethernet (PoE), PoE+ capable of using a 48-volt, 802.3at-compliant injector;
 - 9.2.9 All-outdoor, ruggedized, durable, and compact form-factor requiring no rack space;
 - 9.2.10 Colocation synchronization capabilities;
 - 9.2.11 Quality of Service (QoS) configurable levels;
 - 9.2.12 Physical link aggregation support;
 - 9.2.13 Out-of-band management capabilities;

- 9.2.14 Centralized management and monitoring with alerting capabilities; and
- 9.2.15 Ability to manage configuration changes to radios from the ground level via Wi-Fi.
- 9.3 **Design and Implementation Services:** Contractor for broadband radio design, configuration, and implementation services shall meet the following minimum requirements:
 - 9.3.1 Planning
 - 9.3.1.1 Create a propagation map showing predictive coverage;
 - 9.3.1.2 Cut clutter and create network overlays to represent obstructions on maps;
 - 9.3.1.3 Convert data to Google Earth format so it can be shared with City resources;
 - 9.3.1.4 Work with the City to develop an IP network architecture; and
 - 9.3.1.5 Perform link budgets for all PTP links and all PTMP links required to inject capacity into the mesh Wi-Fi network, where applicable.
 - 9.3.2 Perform field site surveys to collect environmental information;
 - 9.3.2.1 Perform spectrum sweep at all radio locations;
 - 9.3.2.2 Report findings to City in the form of a design document; and
 - 9.3.2.3 Provide a revised bill of materials as a result of new findings in site surveys.
 - 9.3.3 Installation
 - 9.3.3.1 Perform staging and configuration of all network equipment;
 - 9.3.3.2 Coordinate with the City’s Department of Public Works for the installation of any equipment, construction, power, or cabling on or at City facilities or City assets;
 - 9.3.3.3 Coordinate with non-City entities or facilities for equipment mounting and installation;
 - 9.3.3.4 Perform installation of any and all accessories required to mount, provision, and support ongoing operations of the network, e.g., install mounts, brackets, and ancillary equipment;
 - 9.3.3.5 Include the costs for bucket trucks, cranes, or other items necessary to perform the installation of radio equipment;
 - 9.3.3.6 Add all devices to centralized management platforms, including licensing; and
 - 9.3.3.7 Configure monitoring and alerts for all equipment.
 - 9.3.4 Provide network testing, commissioning, and post-installation documentation
 - 9.3.4.1 Provide a template for recommended acceptance test criteria;
 - 9.3.4.2 Perform post-installation inspection;
 - 9.3.4.3 Perform throughput testing;
 - 9.3.4.4 Optimize channels and frequencies;
 - 9.3.4.5 Produce and provide as-built diagrams and asset inventory information;

- 9.3.4.6 Produce and provide ongoing support documentation; and
- 9.3.4.7 Transfer all licensing, ownership, and registrations to the City's Information Technology Department.

9.4 Existing Inventory of City of San José Broadband Links

At the City's sole discretion, the City may request Contractor to assume responsibility for ongoing support, repair, and maintenance services of the City's currently installed radios as listed below:

- 9.4.1 2 each - Ubiquiti AirFiber point-to-point (PTP) link (4 Radios): City Hall to San José Country Club, 15571 Alum Rock Ave., San José, CA 95127 and 2 spare
- 9.4.2 1x BridgeWave FlexPort18 1 Gbps 18 GHz PTP licensed link (2 Radios): City Hall to San José-Santa Clara Regional Wastewater Facility, 700 Los Esteros Rd, San José, CA 95134
- 9.4.3 Each Ruckus 7731 bridge link (2 Radios): City Hall to the San José Police Department facility
- 9.4.4 1x Trango PTP link (2 Radios): San José Municipal Water main building to Annex
- 9.4.5 3x Mimosa B11 PTP links (6 Radios): City Hall to Transportation Incident Management Center (near City Hall) and 2 links for South Side Community Center to San José Police Department substation
- 9.4.6 2x Ubiquiti Rocket PTP Links (4 radios): City Hall to Black Bird House and Summit Center
- 9.4.7 2x Mimosa B5 PTP links (4 Radios): Arcadia Ballpark, 2208 Quimby Rd, San José, CA 95122 and Berryessa Community Center, 3050 Berryessa Rd, San José, CA 95132
- 9.4.8 2x Mimosa B5c PTP links (4 Radios): South Bay Water Recycling to Zone 3
- 9.4.9 2x Mimosa B5 lite PTP links (8 Radios): Happy Hollow Ranger Station, 1300 Senter Rd., San José, CA 95112; The Tech Museum of Innovation, 201 South Market Street, San José CA 95113 to San Pedro Square; and 4 spares for South Bay Water Recycling, 3025 Tuers Rd, San José, CA 95121

EXHIBIT A-2
SAMPLE PRELIMINARY PROJECT IMPLEMENTATION SCHEDULE

Implementation of this project will proceed in accordance with the Sample 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 Sample Preliminary Project Implementation Schedule is based upon work being accomplished Monday through Friday during normal business hours (defined as 8:00 am to 5:00 pm Pacific Time), with the exception of City holidays.

Table A1: Sample Preliminary Project Implementation Schedule

| Task Description | | Task Duration |
|---------------------------------------|--|----------------------|
| Award of Contract | | 1 Day |
| Microwave Link Design Services | | 4 Days |
| | Project Kickoff Meeting | 1 Day |
| | Submit FCC License Request | 1 Day |
| | Order Materials | 1 Day |
| | Review/Finalize Design with Client | 2 Days |
| Installation Services | | 30 Days |
| | Perform Survey at all 6 Sites | 4 Days |
| | Update/order Additional Items | 3 Days |
| | Install Cabling and Mounts at the Country Side for 3 Links | 5 Days |
| | Install 3 Radios/Antennas at Country Side | 3 Days |
| | Install Cabling, Mounts, Radios/Antennas at Public Works | 1 Day |
| | Install Cabling, Mounts, Radios/Antennas at Fire Station | 1 Day |
| | Install Cabling and Mounts at Hicks WT for 3 Links | 3 Days |
| | Install 3 Radios/Antennas at Hicks WT | 3 Days |
| | Install Cabling, Mounts, Radios/Antennas at Long Grove | 1 Day |
| | Align/Sign Off Links from Country Side | 2 Days |
| | Align/Sign Off Links from Hicks WT to Long Grove | 2 Days |
| | De-install Country Side, PW and FS Equipment | 2 Days |
| | De-install Hicks WT and Long Grove Equipment | 2 Days |
| | Install Cabling, Mounts, Radios/Antennas at Palatine Opp | 2 Days |
| | Align/Sign Off Links from Hicks WT to Palatine | 2 Days |
| | Project Close Out with Client | 1 Day |

EXHIBIT A-3
FINAL PRODUCTS AND SERVICES ACCEPTANCE CERTIFICATE

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

FINAL PRODUCTS AND SERVICES ACCEPTANCE CERTIFICATE

Customer Name: City of San José (“City”)
Project Name: As-Required Broadband Radio Links, Wireless RF, and Cellular Coverage Equipment and Services
Work Order: TBD (Specify a unique number or the OP #.)

This Final Products and Services Acceptance Certificate memorializes the occurrence of Final Products and Services Acceptance.

Contractor and the City acknowledge that:

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

City of San José (“City”)

Smart Wave Technologies, LLC (“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 **One Hundred Sixty Thousand Dollars (\$160,000)** during the Initial Term. Any additional services requested by the City that would exceed the preceding maximum amount will be addressed in accordance with the Change Order Procedures. No additional services will be performed unless both Parties execute a Change Order outlining the services requested and the compensation agreed for such services.
- 1.2 Payments shall be made to Contractor by City based on net thirty (30) days payment terms, following the execution of Work Orders for Products and Services and City's acceptance of the deliverables specified in the Work Orders. City shall have no obligation to pay unless Contractor has successfully completed and City has approved the deliverables 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 receipt of City's Work Order by Contractor. 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 Implementation Invoicing Procedure: Contractor will invoice the City upon completion of each Work Order but not more frequently than monthly.
- 2.3 Ongoing Annual Services Invoicing Procedure: Contractor shall invoice the City annually for applicable ongoing services including subscription, technical support, maintenance, and hosting fees beginning on the date of final acceptance or the end of the Warranty Period. City shall prepay a year in advance for applicable ongoing subscription, technical support, maintenance, and hosting services provided under the Agreement.
- 2.4 The City agrees to compensate Contractor for the Services performed and the Software and software customizations provided in accordance with the terms and conditions of this Agreement.

Table B1: Price List – Bill of Materials

| Description | Part Number | Qty. | UOM | Manufacturer Price List | Discount Off List | SmartWave Unit Price |
|--|--------------|------|-----|-------------------------|-------------------|----------------------|
| MIMOSA ITEMS | | | | | | |
| Mimosa A5-14 5GHz Quad Panel 14 dBi 802.11ac AP | A5-14 | 1 | EA | \$996.00 | 15% | \$846.60 |
| Mimosa A5c, 5GHz 1 Gbps+, GPS Sync, 802.11ac, 4port 4x4 MIMO Base Station AP with antenna connectors | A5c | 11 | EA | \$713.00 | 15% | \$606.05 |
| Mimosa B5, 5 GHz 1 Gbps Capable PTP Backhaul | B5 | 0 | EA | \$781.00 | 15% | \$663.85 |
| Mimosa B5c, 5 GHz 1 Gbps Capable PTP Backhaul Connectorized | B5c | 0 | EA | \$558.00 | 15% | \$474.30 |
| Mimosa B24, 24GHz 1.5 Gbps capable PtP backhaul Radio, N-type Connectors | B24 | 0 | EA | \$1,024.00 | 15% | \$870.40 |
| Mimosa C5x 4.9-6.4 GHz , 8 dBi Modular Radio, optional configuration as PTP or PTMP radio and uses Mimosa N5-X series antennas | C5x | 66 | EA | \$89.00 | 0% | \$89.00 |
| Mimosa N5-X20, 4.9 - 6.4 GHz Modular Twist-on Antenna, 250 mm (~10") Dish for C5x, 20 dBi gain. Contains (2) Antenna Assemblies | N5-X20-2 | 23 | EA | \$80.00 | 0% | \$80.00 |
| Mimosa N5-X25, 4.9 - 6.4 GHz Modular Twist-on Antenna, 400 mm (~16") Dish for C5x, 25 dBi gain. Contains (2) Antenna Assemblies | N5-X25-2 | 10 | EA | \$102.00 | 0% | \$102.00 |
| Mimosa N5-360, 4.9 - 6.4 GHz 360 Deg, beamforming antenna for A5c | N5-360 | 0 | EA | \$356.00 | 15% | \$302.60 |
| Mimosa 4.9-6.4GHz 45° Sector Ant. 22dBi 4 Port | N5-45x4 | 0 | EA | \$389.00 | 15% | \$330.65 |
| Mimosa NID, Gigabit Network Interface Device, ESD Protection, Grounding Point | NID | 66 | EA | \$16.00 | 15% | \$13.60 |
| Mimosa compact flexible pole and surface mount. Allows attachment to any pole or flat surface. Fleximount XL Pole length 7.75", Fleximount XL Pole OD 1.5" | FleximountXL | 66 | EA | \$13.00 | 15% | \$11.05 |
| CAMBIUM ITEMS | | | | | | |
| cnWAVE V5000 | V5000 | | | | | |
| 60GHz cnWave V5000 Distribution Node | C600500A004A | 3 | EA | \$1,342.68 | 10% | \$1,208.41 |
| Universal Pole Mount Bracket for 1" - 3" diameter poles | C000000L137A | 3 | EA | \$25.00 | 10% | \$22.50 |
| cnWAVE V3000 | V3000 | | | | | |
| 60GHz cnWave V3000 Client Node Radio Only | C600500C024A | 12 | EA | \$643.93 | 5% | \$611.73 |
| 60GHz cnWave V3000 Client Node Antenna Assembly, 44.5 dBi, 4 Pack | C600500D003A | 12 | EA | \$322.50 | 5% | \$306.38 |
| cnWave Precision Mounting Bracket | C000000L125A | 12 | EA | \$120.00 | 10% | \$108.00 |
| cnWAVE V1000 | V1000 | | | | | |
| 60GHz cnWave V1000 Client Node with US cord | C600500C001A | 14 | EA | \$278.43 | 5% | \$264.51 |
| Additional Cambium Items | | | | | | |
| Universal Wall Mount Bracket | C000000L136A | 14 | EA | \$30.00 | 10% | \$27.00 |
| Tilt Bracket Assembly | N000045L002A | 0 | EA | \$29.00 | 10% | \$26.10 |
| Grounding Cable, 0.6m with M6 ring to M6 ring | C000000L138A | 0 | EA | \$5.00 | 10% | \$4.50 |
| PoE, 60W, 56V, 5GbE DC Injector, Indoor, Energy Level 6 Supply | N000000L142A | 0 | EA | \$30.00 | 10% | \$27.00 |
| PoE, 60W, 56V, 10GbE DC Injector, Indoor, Energy Level 6 Supply | C000000L141A | 0 | EA | \$45.00 | 10% | \$40.50 |
| Gigabit Surge Suppressor (56V) | C000000L033A | 0 | EA | \$50.00 | 10% | \$45.00 |
| Outdoor AC/DC PSU, 100W, 54VDC | N000000L179A | 0 | EA | \$90.00 | 10% | \$81.00 |

| Description | Part Number | Qty. | UOM | Manufacturer Price List | Discount Off List | SmartWave Unit Price |
|---|----------------------|------|-----|-------------------------|-------------------|----------------------|
| DC to RJ45 Plug Power Adapter | C000000L184A | 0 | EA | \$40.00 | 10% | \$36.00 |
| Waterproof PSU Cable Joiner 14-16 AWG | N000000L180A | 0 | EA | \$10.00 | 10% | \$9.00 |
| 10G SFP+ SMF LR Transceiver, 1310nm. -40C to 85C | SFP-10G-LR | 0 | EA | \$74.95 | 10% | \$67.46 |
| 10G SFP+ MMF SR Transceiver, 850nm. -40C to 85C | SFP-10G-SR | 0 | EA | \$49.95 | 10% | \$44.96 |
| 1G SFP MMF SX Transceiver, 850nm. -40C to 85C | SFP-1G-SX | 0 | EA | \$29.95 | 10% | \$26.96 |
| 1G SFP SMF LX Transceiver, 1310nm. -40C to 85C | SFP-1G-LX | 0 | EA | \$34.95 | 10% | \$31.46 |
| Cable Gland for 6-9mm cable, M25, Qty 10 | C000000L123A | 0 | EA | \$55.00 | 10% | \$49.50 |
| Cable Gland, Long, M25, Qty 5 | C000000L124A | 0 | EA | \$40.00 | 10% | \$36.00 |
| Grounding Kit for CAT5e F/UTP 8mm and Cat6A Cable | N000082L173A | 0 | EA | \$20.00 | 10% | \$18.00 |
| CABLE, UL POWER SUPPLY CORD SET, 720mm, US | N000900L031A | 0 | EA | \$5.00 | 10% | \$4.50 |
| RJ45 Connector for CAT6A Cable, Qty 10 | N000082L174B | 0 | EA | \$12.00 | 10% | \$10.80 |
| Optical CABLE,SM, 20m | N000082L188A | 0 | EA | \$85.00 | 10% | \$76.50 |
| Telescope mounting kit | C000000L139A | 0 | EA | \$15.00 | 10% | \$13.50 |
| PTP AND PTMP ACCESSORIES AND INCIDENTAL COMPONENTS | | | | | | |
| RF Elements 5GHz Symmetrical Horn Carrier Class 40° | HG3-CC-S30 | 6 | EA | \$260.00 | 5% | \$247.00 |
| RF Elements 5GHz Symmetrical Horn Carrier Class 60° | HG3-CC-S40 | 8 | EA | \$260.00 | 5% | \$247.00 |
| RF Elements 5GHz Symmetrical Horn Carrier Class 90° | HG3-CC-A60 | 6 | EA | \$413.00 | 5% | \$392.35 |
| 29dBi 4.940-5.875GHz 2' Dual Slant Dish | HG3-CC-A90 | 2 | EA | \$413.00 | 5% | \$392.35 |
| Radome cover for 0.9M dish antenna | HDDA5W-29-DP2 | 0 | EA | \$320.00 | 5% | \$304.00 |
| 32dBi 4.940-5.875GHz 3' Dual Slant Dish | DA5-29 | 0 | EA | \$88.00 | 5% | \$83.60 |
| Radome cover for 0.9M dish antenna | HDDA5W-32-DP | 0 | EA | \$475.00 | 5% | \$451.25 |
| Coax Jumper NM to NM 4' | DA5-32 | 0 | EA | \$148.00 | 5% | \$140.60 |
| POE Surge Protection 100/1000Mbps, Shielded RJ45 | CA400-NM-NM-4 | 44 | EA | \$15.00 | 5% | \$14.25 |
| Astro-Brac, Stellar Series Clamp Kit, Band Mount | CMJ8-POE-A-CA | 12 | EA | \$75.00 | 5% | \$71.25 |
| Outdoor Rated 4-Port 10/100/1000Mbps PoE Managed Switch with 2 Uplink Gigabit Ports, IEEE802.3af/at Standard, up to 30W per port, 120W total | AS-3004-29-PNC | 12 | EA | \$100.00 | 5% | \$95.00 |
| LinkPower APC1048 802.3af to 48V Passive PoE Converter, 10/100/1000/Mbps, 2KV Surge Protection, 48V DC, 12W Output, Pin 4, 5, 7, & 8 | LPS3400ATM-T1 | 69 | EA | \$649.95 | 5% | \$617.45 |
| Outdoor Pole Mounting Kit for Outdoor Switch | APC1048V2 | 67 | EA | \$45.95 | 5% | \$43.65 |
| Single Port 10/100/1000Mbps PoE Injector, Supports IEEE802.3af/IEEE802.3at. PoE Port Output: 30W | MMK0001-L | 69 | EA | \$48.25 | 5% | \$45.84 |
| Mast/Pole Mount Kit, MMK0001-XS for PIS2030/2060/2095 | PIS2030 | 136 | EA | \$199.95 | 5% | \$189.95 |
| Patch cables, ground wire, weather tape, tie wraps, consumable items | MMK0001-XS | 136 | EA | \$35.95 | 5% | \$34.15 |
| LICENSED MICROWAVE MATERIAL LIST | | | | | | |
| ALFOPlus2XG 18 GHz, 300 Mbps full-duplex capacity, software upgrade to 1500 Mbps, LINK, Sub-Band 1, (17700 - 18140 MHz / 19260 - 19700 MHz) 1+0 software upgradable to 2+0, QPSK to 4096QAM, 2x | LNKAO2XG018GSB1SP DP | 1 | EA | \$16,450.00 | 30% | \$11,515.00 |

| Description | Part Number | Qty. | UOM | Manufacturer Price List | Discount Off List | SmartWave Unit Price |
|--|----------------------|------|-----|-------------------------|-------------------|----------------------|
| Electrical GbE ports + 1x 10GbE + 1x 1GbE Optical GbE Ports, OMT Port Radio Branching, 1 year warranty | | | | | | |
| ALFOPlus2XG 11 GHz, 300 Mbps full-duplex capacity, software upgrade to 1500 Mbps, LINK, Sub-Band 1, (17700 - 18140 MHz / 19260 - 19700 MHz) 1+0 software upgradable to 2+0, QPSK to 4096QAM, 2x Electrical GbE ports + 1x 10GbE + 1x 1GbE Optical GbE Ports, OMT Port Radio Branching, 1 year warranty | LNKAO2XG011GSB1SP DP | 0 | EA | \$16,450.00 | 30% | \$11,515.00 |
| AP2 Capacity Upgrade | SWK500T1500M | 2 | EA | \$950.00 | 30% | \$665.00 |
| AP2 Dual-Carrier Upgrade | SWK10T20 | 2 | EA | \$1,250.00 | 30% | \$875.00 |
| AP2 Adaptive Code Modulation | SWKACM | 2 | EA | \$250.00 | 30% | \$175.00 |
| ALFOPlus2 SW License to enable Security Package (HTTPS, SFTP, SSH, SNMPv3) | SWKSECP | 2 | EA | \$250.00 | 30% | \$175.00 |
| ALFOPlus2 SW License to enable 256-AES Encryption, Also requires UPG-AP2-SECP | SWKAES | 2 | EA | \$2,000.00 | 30% | \$1,400.00 |
| 18 GHz Antenna, 1ft, Dual Pole, Circular Flange, SIAE Direct Mount | UFTBFS27A | 2 | EA | \$520.00 | 20% | \$416.00 |
| 11 or 18 GHz Antenna, 2ft, Dual Pole, Circular Flange, SIAE Direct Mount | UFTCF23A | 0 | EA | \$690.00 | 20% | \$552.00 |
| 11 or 18 GHz Antenna, 3ft, Dual Pole, Circular Flange, SIAE Direct Mount | UFTFE23A | 0 | EA | \$1,495.00 | 20% | \$1,196.00 |
| 10 Gbps Optical SFP Module, -LX (Single mode) | E01435 | 0 | EA | \$325.00 | 20% | \$260.00 |
| Tower Stand-Off Bracket | SWTWRMNT | 1 | EA | \$300.00 | 5% | \$285.00 |
| Non-penetrating SLED Mount with 10FT Mast and Protective Mat | SWSLED10FT | 1 | EA | \$500.00 | 5% | \$475.00 |
| Patch cables, ground wire, weather tape, tie wraps, consumable items | SWMISC | 1 | EA | \$1,000.00 | 20% | \$1,200.00 |

All amounts stated above are in United States Currency.

*The signed Final Products and Services Acceptance Certificate (Exhibit A-3) triggers payment for the as-required Products and Services provided.

Table B2: Price List - Services

| SERVICES | Unit of Measure | Price Per Unit |
|--|------------------------|-----------------------|
| 1. New Installations | device | \$750 |
| 2. Annual Ongoing Maintenance and Support | device | \$360 |
| 3. Real-time, Ongoing Monitoring, Alerting, and Reporting | project | \$22,500 |
| 4. Phone/Web Support | incident | \$175 |
| 5. FCC Assessment | assessment | \$350 |
| 6. Repair/Replacement Service | incident | \$350 |
| 7. Truck Roll | roll | \$1,500 |
| 8. 3-Year Extended Warranty (Mimosa and Cambium Items) | device | \$150 |

| OPTIONAL SERVICE(S) | Unit of Measure | Price Per Unit |
|--|------------------------|-----------------------|
| Additional 1 Year of Extended Warranty (Mimosa and Cambium Items) | | \$50 |
| Project Management | hour | \$150 |
| Design | hour | \$175 |
| Field Service | hour | \$105 |
| Training | hour | \$175 |
| Tower Climb (2-Person Crew per Day) | hour | \$2,500 |
| Bucket Truck Roll (1 Person for Half Day) | hour | \$750 |
| Subcontractor (Cost Plus 20%. Hourly Rate Of \$100 Will Be \$120) | hour | \$120 |

3 RENEWAL PERIOD COMPENSATION

- 3.1 After the Initial Term, the City reserves the right to extend the term of this Agreement pursuant to Section 2.2 (“Options to Extend”) at the same rates as the Initial Term unless otherwise requested and agreed to in writing by the Parties.
- 3.2 Price renegotiation shall not apply to equipment, with equipment pricing being based on the discount off of list price established through RFP PUR-RFP2021.07.10077 for As-Required Broadband Radio Links, Wireless RF, and Cellular Coverage Equipment and Services.
- 3.3 Price Renegotiation for Services. Contractor may request adjustments to compensation rates sixty (60) days prior to an option term. Contractor shall provide information justifying reasons for any increase, and City shall not unreasonably withhold approval of any increase provided the renewal quote for ongoing services does not increase by more than the Consumer Price Index (“CPI”) identified below.

CPI-All Urban Consumers (CPI-U)

Series Id: CUURS49BSA0, Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

Base Period: 1982-84=100

- 3.3.1 The index reference shall be the CPI that is published most immediately preceding the request, which shall be compared with the CPI published twelve months prior.
- 3.3.2 Notwithstanding the preceding provisions of this Section, the adjustment of any compensation rate for any twelve-month period shall not exceed 3% over the previous year's fees, unless the City's Living Wage and/or Prevailing Wage, if applicable, increases by more than 3% or unless otherwise negotiated.
- 3.4 City shall provide Contractor prior written notice in the form of Exhibit E of its intention to exercise its option for the next term prior to the end of the then current term. The City's Director of Finance or designee is authorized to exercise options on behalf of the City.

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> | \$1,000,000 per occurrence for bodily injury, personal injury and property damage or \$2,000,000 annual aggregate. |
| <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> | \$1,000,000 combined single limit per accident for bodily injury and property damage. |
| <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> | Coverage A: Statutory Coverage B: \$1M each accident/ each employee injury by disease |
| <p>4 Professional Errors and Omissions Including coverages for negligent acts, errors, or omissions arising from professional services provided under this contract,</p> | Not less than \$1,000,000 per claim. |
| <p>5 Cyber & Technology Errors & Omission Technology/professional liability insurance and data protection liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering services provided under this agreement as well as all Vendor costs and fees, including damages it is obligated to pay Client or any third party, which are associated with damaged, lost or corrupted data. This may be met through a standalone policy or included as a component in a Commercial General Liability Policy.</p> | Not less than \$2,000,000 each occurrence. |

II. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to 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. 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.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.
- d. 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.
- e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

2. Workers' Compensation and Employers Liability

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

3. 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 having a financial strength rating with A.M. Best of A-, Financial Size Category VII or better.

V. Verification of Coverage

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

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

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

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

VI. Subcontractors

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

EXHIBIT E
NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT

| | |
|---|--|
| AGREEMENT TITLE: | |
| CONTRACTOR Name and Address: | |
| DATE: | |

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

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

OPTION TERM

| | |
|-------------|--|
| Begin date: | |
| End date: | |

CHANGES IN RATE OF COMPENSATION

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

Pursuant to Section ___ of the Agreement the Rates of Compensation are hereby adjusted as follows:
 (use attachment if necessary)

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

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

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

EXHIBIT F-1

WAGE REQUIREMENTS AND INFORMATION

Pursuant to City of San José Prevailing Wage and Living Wage Policies, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage or living wage in accordance with the requirements of this policy document, and the Wage Determination as indicated in Exhibit F-2.

1 CITY COUNCIL WAGE POLICIES

1.1 Living Wage Policy

- 1.1.1 Under City Council Policy 3-3, contractors who are awarded certain City service and labor contracts are required to pay a minimum level of compensation and provide a minimum number of days of compensated time off to covered employees who work on these projects.
- 1.1.2 Living wages shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing employees who will perform services pursuant to the Agreement.
- 1.1.3 If the wage rates set forth in the collective bargaining agreement fall below the then current Living Wage Rate set by the City of San José, the required rate of pay shall be the City's Living Wage Rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the requirements of the Living Wage Policy.
- 1.1.4 If there is no collective bargaining agreement as described above, not less than the current Living Wage Rate must be paid to covered employees performing work identified in the applicable wage determination issued by the City of San José's Office of Equality Assurance.
- 1.1.5 Contractors shall provide twelve (12) days of compensated time off to full time covered employees, and six (6) days of compensated time off to part time covered employees. Paid holidays, paid sick days, paid vacation, and paid personal days are allowed to count towards the 12 or 6 required days.

1.2 Prevailing Wage Policy

- 1.2.1 California Labor Code and/or Resolutions of the City of San José require the payment of not less than the general rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.
- 1.2.2 Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.
- 1.2.3 Prevailing Wages established by the City of San José shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing workers who perform services pursuant to this agreement; or
- 1.2.4 If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San José's Office of Equality Assurance.

- 1.2.5 The City's Prevailing Wage will be subject to annual adjustment on the anniversary date of the agreement. Adjustment will be based on the U.S. Department of Labor/Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San José.

Please see Attachment F-2 for Classification and Wage Determination.

2 REPORTS

- 2.1 The Office of Equality Assurance will monitor the payment of prevailing and living wages by requiring the awarded Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.
- 2.2 The awarded Contractor and Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policies.
- 2.3 Labor compliance statements must be filed in the Office of Equality Assurance within 10 days of execution of this Agreement at the address below.

City of San José
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor, San José, CA 95113
Phone: 408-535-8430

3 LIVING WAGE POLICY PROVISIONS

On November 17, 1989, by Resolution No. 68554, amended on June 8, 1999 by Resolution No. 68900, amended on May 27, 2003 by Resolution No. 71584, amended on June 4, 2013 by Resolution No. 76653 and amended on January 28, 2014 by Resolution No. 76911 the San José City Council adopted its Living Wage Policy to meet the employment and economic development needs of low wage workers by mandating:

- 3.1 A minimum level of compensation and a minimum number of days of compensated time off for workers employed by contractors and subcontractors who are awarded certain City of San José service and labor contracts with an expenditure in excess of \$20,000 and recipients who receive direct monetary financial assistance from the City in the amount of \$100,000 or more in any twelve month period, excluding non-profit corporations;
- 3.2 The provision of health insurance benefits or the ability to afford health insurance;
- 3.3 Retention of employees when certain new contractors take over a continuing City service;
- 3.4 An environment of labor peace; and
- 3.5 Employee Work Environment Evaluation (Third Tier Review)

4 WAGE REQUIREMENTS

For the purpose of this provision, Covered Employees means any person employed by the Contractor or Subcontractor who meets the following conditions:

- 4.1 The person does not provide volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- 4.2 The person expends at least half of his/her time on work for the City;

- 4.3 The person is at least eighteen (18) years of age; and
- 4.4 The person is not in training for the period of training specified under training standards approved by the City of San José.

5 ENFORCEMENT

5.1 General

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Contract, it is required to pay workers either a prevailing or living wage (“Wage Provision”) and to submit certain documentation to the City establishing its compliance with such requirement. (“Documentation Provision.”) Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively “Goals”):

- 5.1.1 It protects City job opportunities and stimulates the City’s economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- 5.1.2 It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- 5.1.3 Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San José because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San José.
- 5.1.4 It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

5.2 Remedies for Contractor’s Breach of Prevailing Wage/Living Wage Provisions

- 5.2.1 **Withholding of Payment:** Contractor agrees that the Documentation Provision is critical to the City’s ability to monitor Contractor’s compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor’s compliance with this Provision, as well as the Wage Requirement, is an express condition of City’s obligation to make each payment due to the Contractor pursuant to this Agreement. The City is not obligated to make any payment due the Contractor until Contractor has performed all of its obligations under these Provisions. This Provision means that City can withhold all or part of a payment to Contractor until all required documentation is submitted. Any payment by the City despite Contractor’s failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.
- 5.2.2 **Restitution:** Contractor agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City’s

administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.

5.2.3 **Liquidated Damages for Breach of Wage Provision:** Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing/living wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, Contractor shall pay to the City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should have been paid.

5.2.4 **Additional Remedies:** Contractor agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Contractor or subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

6 AUDIT RIGHTS

All records or documents required to be kept pursuant to this Contract to verify compliance with the Wage Provision shall be made available for audit at no cost to City, 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. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

7 COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

EXHIBIT F-2 CITY OF SAN JOSE CLASSIFICATION DETERMINATION



*Department of Public Works
Office of Equality Assurance*

Wage & Labor Compliance Letter of Classification Determination

October 2019

ATTENTION: City Funded Construction, Maintenance, and Qualifying Living Wage Service Projects are subject to the City of San Jose Prevailing Wage and Living Wage Ordinances.

Based on California Labor Laws regarding Public Funded Contracts and the City of San Jose Living Wage Ordinance regarding identified Contract Services, all City Funded Contract/Purchase Order Contractor/Vendors' assigned workers, performing labor (labor defined by the Dept. of Labor as "Construction, alteration, demolition, installation, maintenance or repair work done under contract and paid in whole or in part out of public funds." and/or a Service, identified in the Living Wage Ordinance, is subject to the Wage Ordinance requirements.

CITY OF SAN JOSE LIVING WAGE CLASSIFICATIONS & RATES

Contracts subject to City of San Jose Living Wage and Prevailing Wage Policies must apply the higher wage rate. The policy checked below shall apply to this solicitation.

- | | |
|--|--|
| <input checked="" type="checkbox"/> Prevailing Wage Policy | <input type="checkbox"/> The Living Wage Rate applied due to being the Higher Wage Rate |
| <input type="checkbox"/> Living Wage Policy | <input type="checkbox"/> The Prevailing Wage Rate applied due being the Higher Wage Rate |

Wage index assigned to Purchasing Contract/Agreements is based on Bid advertising date. Wage indexes are published semiannually. Contract/Agreement Bid Advertised between Sept 1 to Feb 22 Are Assigned Wage Index 2019-2

Various Classifications might be applicable. Confirm Classifications with your assigned Labor Compliance Specialist.

The Office of Equality Assurance determined the following Classifications as appropriate to complete this project.

Contractor will manage and maintain all aspects of the City's existing wireless broadband implementations and to further design, deploy, manage and maintain future implementations and expansion, above and below ground. This vendor will provide the vehicle for standardized broadband radio equipment, ongoing support, and warranty services.

Prevailing Wage Classification [San Jose Prevailing Wage Page] [DIR Wage Index 2019-2] [Apprentice Wage Index 2019-2]
(All public works contracts valued at \$30,000 or more carry an obligation to hire apprentices)

Electrical Lineman: Pole line and Steel or metal structures used for the purpose of carrying electrical wires, conductors, or equipment (this includes transmission towers, outdoor substations, etc.) except for any low voltage control.

Telecomm. Technicians are to be assigned any low voltage control. Works outside aloft on poles and/or aerial cable leads (not over 45 feet), on ladders on aerial personnel lifts. Works near high voltage transmission lines when working aloft on poles and/or aerial cable leads. Works in below ground structures/openings, i.e., manholes, splice pits, service boxes, etc. Works in confined, well ventilated below ground structures/ openings

If clipping in crew consists of not more than two (2) Linemen and two (2) Groundmen, one (1) Lineman shall be designated as the Foreman and paid Foreman's rate of pay.(b) If clipping in crew consists of more than two (2) Linemen and two(2)Groundmen, there shall be a nonworking Foreman.

CLASSIFICATION: Electrician [Santa Clara Co. Basic Trade Rate]

Comm & System Installer (Ground Work)

Perform staging and configuration of all network equipment to perform installation of radio equipment. Perform Field Site Surveys to collect Environmental Information
Construction, installation, pre-weld heating, welding, brazing, burning, cutting, fitting, bending, drilling, shaping, and erection of all copper, channel iron, angle iron, I-beams, brackets, supports, or fittings that are fabricated or pre-fabricated which are specific parts of the installation of the electrical work or equipment on the jobsite and the maintenance thereon, this in no way includes shared brackets, hanger systems or support racks;
Perform Spectrum Sweep at all Radio Locations.

Lineman Cable Splicer

Cable splicing: All work of joining, splicing, and insulating, where wiped lead joints are necessary, shall be performed by Cable splicers. Journeyman Linemen shall be used in assisting Cable Splicers, where wiped lead joints are necessary and may place flame proof covering. The splicing or joining of synthetic cable of such insulation or application characteristic

Utility Lineman (Pole and Tower Work)

Perform Tower Installation work for all equipment placed on city owned towers Perform installation of any and all accessories required to mount, provision and support on-going operations of the network (Install mounts, brackets, cabinetling, etc)

This classification shall cover workers operating the following equipment: caterpillars, truck equipped with winch and/or boom, hydraulically operated backhoe with or without front-end loader, hydraulic mounted booms and such other equipment.

Grounds-man or Apprentice

Groundman shall be to assist Linemen, and under no circumstances shall they climb poles, towers or ladders. Groundman will be expected to utilize ladders for the purpose of entrance and exit to trenches and vaults or other deenergized underground facilities that may require it

| 2019-2 Electrician | Basic Rate | H/W | Pension | Vac/Ho | Training Fee | Other | Total Wage Rate | Overtime & Saturday | Sunday & Holiday |
|-----------------------------|------------|-------|---------|--------|--------------|-------|-----------------|---------------------|------------------|
| Comm & Sys Installer | 40.02 | 11.05 | 6.40 | | 1.10 | 0.26 | 60.23 | 80.94 | 101.65 |
| Lineman Cable Splicer | 51.87 | 7.00 | 9.59 | | 0.29 | 0.63 | 78.08 | 138.82 | 138.89 |
| Utility Lineman Tech/Welder | 46.87 | 5.40 | 9.76 | 0.47 | 0.13 | 62.63 | 87.07 | 111.50 | 46.87 |
| Grounds man | 35.47 | 7.00 | 9.55 | 0.18 | 0.40 | 53.66 | 53.66 | 90.76 | 90.76 |

*Training Fee: If Contractor is non-signatory to a Union, training fee is paid to the CAC. [\[Link to CAC Contribution\]](#)

Predetermined Increases:

ELECTRICAL UTILITY LINEMAN: LINEMAN & CABLE SPICER

Determination C-61-X-3-2019-2 is currently in effect and expires on December 31, 2019**

Effective January 1, 2020, there will be an increase of \$0.25 to wages and/or fringes.

Effective June 1, 2020, there will be an increase of \$2.05 to wages and/or fringes.

Effective June 1, 2021, there will be an increase of \$2.05 to wages and/or fringes.

There are no further increases applicable to this determination.

ELECTRICAL UTILITY LINEMAN: GROUNDMAN

Determination C-61-X-3-2019-2 is currently in effect and expires on December 31, 2019**

Effective January 1, 2020, there will be an increase of \$0.25 to wages and/or fringes.

Effective June 1, 2020, there will be an increase of \$1.65 to wages and/or fringes.

Effective June 1, 2021, there will be an increase of \$1.64 to wages and/or fringes.

There are no further increases applicable to this determination.

CLASSIFICATION: Telecommunications Technician

[\[Northern CA Basic Trade Rate\]](#)

Technicians must be Licensed and Unlicensed Microwave Radio Links, distributed radio installations, Machine to Machine (M2m) Cellular and other wireless broadband technologies. Uses passive signal combining networks: splitters, directional couplers, taps, and signal combiners; active signal combining: combiner amplifiers, post amplifiers, and headend driver amplifiers; headend signal combining.

Uses basic concepts; processing requirements; over-the air broadcast television. Single-channel FM terrestrial microwave; TVRO satellite; FM affair; local origination; commercial insertion; satellite stereo TV audio; data services; AML microwave.

Installation and maintenance of consumer Broadband headend equipment unassociated equipment. Able to perform to FCC standards. Works with amplitude modulation principles; modulation index; sidebands and the frequency domain; amplitude modulation power distribution; single-sideband communications, frequency conversion. Performs automated 24-hour FCC testing procedures: creating test plan; selecting tuner configuration and CSO/CTB system measurement; formatting RAM card; making programming and reviewing test

| 2019 Classifications | Basic Rate | H/W | Pension | Vac/Hol | Training Fee | Other | Total Wage Rate | Overtime & Saturday | Sunday & Holiday |
|----------------------|------------|------|---------|---------|--------------|-------|-----------------|---------------------|------------------|
| Telecom. Tech. | 28.50 | 2.79 | 0.93 | 3.28 | - | 35.50 | 49.75 | 78.25 | 28.50 |

*Training Fee: If Contractor is non-signatory to a Union, training fee is paid to the CAC. [\[Link to CAC Contribution\]](#)

Predetermined Increases:

No scheduled increases

CLASSIFICATION: Laborer

[Northern California Basic Trade Rate]

Traffic Control Person - When only one Traffic Control person needed, classification is Control Person I.

Control person I
Control Person II

Reads and interprets Supervisors' plans for layout of traffic control crash cushions, construction Area signage
Installation and removal of traffic control, crash cushions, construction area signage. Works under supervision of a Traffic Control Person I.

| 2019-2 Classifications | Basic Hourly | HW | Pension | Vac/Hol | Training Fee | Other | Total Wage Rate | Overtime & Saturday | Sunday & Holiday |
|---------------------------|--------------|------|---------|---------|--------------|--------|-----------------|---------------------|------------------|
| Traffic Control Person I | 32.02 | 8.50 | \$12.55 | 3.05 | 0.50 | \$0.25 | 56.87 | 73.59 | 89.83 |
| Traffic Control Person II | 29.52 | 8.50 | \$12.55 | 3.05 | 0.50 | \$0.25 | 54.37 | 69.13 | 83.89 |

*Training Fee: If Contractor is non-signatory to a Union, training fee is paid to the CAC. [\[Link to CAC Contribution\]](#)

Predetermined Increases:

TRAFFIC CONTROL/LANE CLOSURE (LABORER)

Determinations NC-23-102-13-2019-1 and NC-23-102-13-2019-1A are currently in effect and expire on June 28, 2020**.

Effective June 29, 2020, there will be an increase of \$2.16 to be allocated to wages and/or fringes.

Effective June 28, 2021, there will be an increase of \$2.24 to be allocated to wages and/or fringes.

Effective June 27, 2022, there will be an increase of \$2.33 to be allocated to wages and/or fringes.

There will be no further increases applicable to these determinations.

Saturday and Sunday Work. Work performed on Saturday as defined below shall be paid for at one and one-half (1-1/2) times the regular rate of pay for the first eight (8) hours of work and at two (2) times the regular rate of pay for all hours worked in excess of eight (8). Work performed on Sunday as defined below shall be paid for at two (2) times the regular rate of pay for all hours worked. A shift, which commences on or after 1:00 a.m. on Saturday morning and before 1:00 a.m. on Sunday morning shall be deemed Saturday work for the entire shift. A shift, which commences on or after 1:00 a.m. on Sunday morning and before 1:00 a.m. on Monday morning shall be deemed Sunday work for the entire shift.

Night Shifts. When work is performed on a night shift, an Employee assigned to work such night shift shall be paid twelve and one-half percent (12-1/2%) differential in addition to his/her regular pay. A night shift is a shift, which commences after 2:00 p.m. or before 4:00 a.m. during any twenty-four (24) hour period commencing at 12:01 a.m.

City of San Jose Prevailing and Living Wage Requirements.

- ❖ Contractor is to be registered with DIR before bidding
- ❖ Contractor is required to post DIR Prevailing Wage information on-job site for workers
- ❖ Contractor is to compensate workers no less than the DIR assigned Rates nor less than the Living Wage rate
- ❖ Contractor shall when applicable make travel and subsistence payments to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of Industrial Relations in accordance with Labor Code Section 1773.8
- ❖ Contractor is required to employ Trade Apprentices as directed by the DIR on Prevailing Wage projects with Contracts amounting \$30,000 and over,
- ❖ Workers schedule is Monday through Friday, between 8:00 am to 5:00 pm.
- ❖ Wage rates for holiday and overtime are kept in adherence to all labor standards and regulations and adjusted on predetermined dates of wage increase
- ❖ Worker Total Wage Rate is not to be set less than the general prevailing rate of per diem wages; Living Wage ordinance requires Prevailing Wage classification wages set to the Living Wage rate if DIR assigned rate is lower.
- ❖ Contractor is to submit Office of Equality Assurance Labor Compliance Documents upon onset of each new or renewal of contracts.
- ❖ Contractor will submit Certified Payrolls to the Office of Equality Assurance Labor Compliance Specialist assigned to the project on a monthly basis, throughout the full duration of the Contract/Agreement.

Living Wage Ordinance Provisions for the Qualifying Employee(s) Assigned to Execute this Contract

- ❖ Compensate employee the Living Wage Hourly Rate determined by the City of San Jose’s Office of Equality Assurance,
- ❖ Employee’s wage rate will be adjusted annually on July 1 of each year. The Living Wage adjusted rate is published on the Office of Equality Assurance website and commences, July 1 of each year
- ❖ Provide employee 12 days paid leave annually for full-time worker/ 6 days paid leave for part-time workers. Paid days off can be in the form of Holiday, Sick, Vacation, Personal Leave, etc
- ❖ Provide an Employment Policy stating employee is not subject to layoff due to change or loss of City Contract,
- ❖ For contracts \$100,000 or more, a Third Tier Review is conducted to determine if Contractor is able to provide an environment of Labor Peace,
 - Contractor must adopt an Employee Retention Policy, abiding by the Living Wage Ordinance requirements, for the employees assigned to contract,

Living Wage Qualified Employees Must Meet the Conditions Listed Below.

- ❖ Person who is not a volunteer
- ❖ Is over 18 years of age
- ❖ At least half of assigned employment hours are spent working on this contract
- ❖ Is currently not in training (as specified under training standards approved by the City)
- ❖ For contracts of \$50,000 and more,
 - Employee must have been employed for the contracted company, at least 6 months.
 - In the event of no current employees meeting 6-months employment requirement, contractor may offer employment to the predeceasing contractor’s employee assigned to this service).

If Contractor is non-Union Signatory and is not providing employer funded benefits, the amount of fringe benefits are to be included in workers hourly wage rate.

Contractor shall not perform contracted on-site work until Labor Compliance Documents are filed.

Contractor and Subcontractor(s) are required to submit copies all Certified Payroll Reports with Statement of Compliance monthly, to The Office of Equality Assurance. To verify dates of no work performed, submit a Non-performance Statement.

[OEA Labor Compliance documents and instructions are found on the OEA website.](#)

[\[Click here for direction to OEA website\]](#)

Contract/Purchase Orders Wages Ordinance Provisions

Office of Equality Assurance Wage Determination Packet

City of San Jose funded Construction, Maintenance and Service Contracts are subject to either, Prevailing Wage and/or Living Wage Ordinances. The Office of Equality Assurance oversees compliance of these Ordinances. A Wage Determination packet indicating the allowed worker classifications, wages, and Wage Ordinance provisions is found on the Office of Equality Assurance website.

Contact Office of Equality Assurance for a Copy of the City of San Jose Wage Determination Packet

City of San Jose – Public Works
Equality Assurance
200 E. Santa Clara St., 5th Floor Tower
San Jose, CA 95113-1905
Phone: 408.535.8430

How are the Classifications and Wages Determined?

The Department of Industrial Relations (DIR) publishes a Wage Index semiannually; indicating the Prevailing Wage rates for all State, Regional, and Local County trades. The Wage Index assigned to a Bid Request is determined by the date a Bid Request is advertised. The Living Wage Ordinance applies to contracts amount \$20,000 and over, for specific services. The current Wage Index (along with its predetermined wage increases) and the Living Wage rate (with annual wage increases) published at time of Bid Request advertisement will apply to the Contract/Agreement and be carried throughout the duration of the Contract/Agreement.

Total Hourly Wage Rate is the sum of Basic Hourly rate with cost of the follow Fringe Benefits:

= (Hourly Basic Pay Rate + Hrly Health ins cost + Hrly Pension cost + Hr Training fee + Hrly Vac/Holiday cost
(An OEA Specialist can provide calculation to convert monthly benefit payments into hourly rates.)

Department of Industrial Relations (DIR) Requirement:

DIR requires all Contractors/Vendors to complete a DIR Registration and Electronically Submit Certified Payrolls. Small Project Exemption relieves Contractor/Vendors of this registration and certified payroll requirement. However, City of San Jose will continue to require submission of Certified Payroll Reports.

Remedies for Contractor/Vendors' Breach of Wage Ordinances' Provisions:

The city is not obligated to make any payments due the contractor until contractor has performed all its obligations under these provisions. This provision means that city can withhold all or part of a payment to contractor until all required documentation is submitted.

Any payment by the city despite Contractor/Vendors' failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this agreement or a waiver of the right to withhold payment for any subsequent breach of the wage requirement or the documentation provision.

- * **Restitution:**
Require the employer to pay any amounts underpaid in violation of the required payments and city's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the city.
- * **Suspension or Termination:** Suspend and/or terminate agreement for cause;
- * **Debarment:**
Debar contractor or subcontractor from future city contracts and/or deem the recipient ineligible for future financial assistance.
- * **Liquidated Damages for Breach of Wage Provision:**
Contractor agrees its breach of the wage requirement would cause the city damage by undermining the goals, and city's damage would not be remedied by Contractor/Vendors' payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The city and contractor mutually agree that making a precise determination of the amount of city's damages as a result of Contractor/Vendors' breach of the wage requirement would be impracticable and/or extremely difficult.
- * **THEREFORE, THE PARTIES AGREE THAT IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY, AS LIQUIDATED DAMAGES, THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES DETERMINED BY THE OFFICE OF EQUALITY ASSURANCE.**

**EXHIBIT F-3
LABOR COMPLIANCE ADDENDUM**



LABOR COMPLIANCE ADDENDUM

| | |
|-------------------------------------|---|
| AGREEMENT TITLE: | As-Required Broadband Radio Links, Wireless RF, and Cellular Coverage Equipment & Services |
| CONTRACTOR Name and Address: | SmartWave Technologies, LLC 6985 Via Del Oro, #A-1 San José, CA 95119 |

By executing this Addendum, Contractor acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Purchase Order, including all renewals and extensions, is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. Contractor shall be obligated to pay not less than the General Prevailing Wage Rate and/or Living Wage Rate as indicated in the attached Exhibit(s) titled “Work Classification and/or Living Wage Determination.”

- A. Prevailing Wage Requirements.* California Labor Code and/ or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Contractor shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.
- B. Living Wage Requirements.* Any person employed by Contractor or subcontractor or City financial recipient or any sub recipient whose compensation is attributable to the City’s financial assistance, who meets the following requirements is considered a covered employee. The employee: 1) is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; 2) spends at least half of his or her time on work for the City; 3) is at least eighteen (18) years of age; and 4) is not in training for the period of training specified under training standards approved by the City.
- C. Reports.* Contractor shall file a completed and executed copy of this Addendum with the Department of Finance/Purchasing Division. Upon award the Department of Finance/Purchasing Division shall provide the contractor with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Contractor shall not perform on site work on this contract until labor compliance documents are filed. Contractor shall also report additional information, including certified payrolls, as requested by Director of Equality Assurance to assure adherence to the Policy.

D. *Coexistence with Any Other Employee Rights.* These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

E. *Audit Rights.* All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Requirement shall be made available for audit at no cost to City, 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. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Contractor's address indicated for receipt of notices in this Contract.

F. *Enforcement.*

1. **General.** Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Requirement promotes each of the following (collectively "Goals"):


- a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. **Remedies for Contractor's Breach of Prevailing Wage/Living Wage Provisions.**

- a. **WITHHOLDING OF PAYMENT:** Contractor agrees that the Documentation Provision is critical to the City's ability to monitor Contractor's compliance with the Wage Requirement and to ultimately achieve the Goals. Contractor further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Requirement. In light of the critical importance of the Documentation Provision, the City and Contractor agree that Contractor's compliance with this Provision, as well as the Wage Requirement, is an express condition of City's obligation to make each payment due to the Contractor pursuant to this Agreement. **THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. THIS PROVISION MEANS THAT CITY CAN WITHHOLD ALL OR PART OF A PAYMENT TO CONTRACTOR UNTIL ALL**

REQUIRED DOCUMENTATION IS SUBMITTED. Any payment by the City despite Contractor's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement or a waiver of the right to withhold payment for any subsequent breach of the Wage Requirement or the Documentation Provision.

- b. **RESTITUTION:** Require the employer to pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- c. **SUSPENSION OR TERMINATION:** Suspend and/or terminate Agreement for cause;
- d. **DEBARMENT:** Debar Contractor or subcontractor from future City contracts and/or deem the recipient ineligible for future financial assistance.
- e. **LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION:**
Contractor agrees its breach of the Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Contractor's payment of restitution to the workers who were paid a substandard wage. Contractor further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. The City and Contractor mutually agree that making a precise determination of the amount of City's damages as a result of Contractor's breach of the Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

City
By 
Name: Vijaykumar Uppin
Title: Senior Analyst
Date: September 14, 2022

Digitally signed by Vijaykumar Uppin
DN: cn=Vijaykumar Uppin, o=City of San Jose, ou=Finance Purchasing, email=vijaykumar.uppin@sanjose.gov, c=US
Date: 2022.09.14 12:21:15 -0700


Contractor
By 
Name: Al Brown
Title: CEO
Date: September 6, 2022

EXHIBIT G

INFORMATION TECHNOLOGY AND SECURITY REQUIREMENTS

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

1. Privacy and Disclosure

Contractor agrees in the performance of services to comply with City's Privacy and Disclosure Policy, [insert cross reference if applicable]. Contractor shall ensure that all webpages that it creates are consistent with the Policy. Contractor further agrees that it shall treat all information received through the performance of this Agreement in strict accordance with the Policy.

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

2. Payment Card Industry Requirements

Contractor agrees to comply with the City's Payment Card Industry (PCI) Requirements in the performance of the services provided under this Agreement [insert cross reference if applicable]

3. Warranty for Services and Software Customizations

Contractor warrants to City that Contractor shall render all Services and software customizations provided under this Agreement with reasonable care and skill and warrants that they will function per the approved business requirements and design under ordinary use and operation in conformance with the specifications and documentation. Additionally, Contractor shall warrant its Services and software customizations for a period of one (1) year after Final System Acceptance [insert cross reference where defined if applicable] ("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 [insert cross reference if applicable]. Upon receipt of such notice, Contractor will investigate the warranty claim. If this investigation confirms a valid warranty claim, Contractor shall (at no additional cost to the City) repair the defective Services or software customizations. The one (1) Warranty Period is reset for any repaired or replaced item(s), beginning upon City acceptance of the repaired or replaced item(s). If despite its reasonable efforts, Contractor is unable to provide the City with Services or software customizations in compliance with the foregoing warranty, City may pursue its remedy at law to recover direct damages resulting from the breach of this warranty.

4. Warranty for Software

Unless otherwise stated in the Software License Agreement [insert cross reference if applicable], Contractor warrants the Contractor Software for one (1) year from the date of Final System Acceptance in accordance with the terms of the Software License Agreement and the provisions of Section 5.

5. 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 [insert cross reference if applicable].

6. Upgrades

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

7. New Media

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

- 7.1 Shall be new and free from defects in manufacture and materials;
- 7.2 Shall be manufactured in a good and workmanlike manner using a skilled staff fully qualified to perform their respective duties;
- 7.3 Shall, during the Warranty Period, function properly under ordinary use and operate in conformance with the specifications; and
- 7.4 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.

8. Confidential Information

8.1 Confidentiality

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

8.2 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

8.3 Ownership of Data

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

8.4 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.

8.5 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, including, but not limited to, providing the City with a copy of current source code, support materials, and sufficient time to effect the transition. City agrees to only use such code and materials to support the City's use of the Software. 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.

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

8.6 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.

9. Security Requirements

9.1 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.

9.2 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.

9.3 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.

9.4 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.

9.5 Security Controls

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

9.6 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.

9.7 Compromised Security

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

9.8 Incident Response

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

9.9 Contingency Planning

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

EXHIBIT H WORK ORDER FORM

CITY OF SAN JOSÉ - WORK ORDER

| | |
|------------------------|----------------------|
| Date: | Contractor: |
| Work Order No.: | Assigned to: |
| OP Number: | Employee No.: |

| WORK ORDER INFORMATION | | | | | | |
|-------------------------|--------------------------------|--------------------|------------------------|-------------|-------------------|-----------------------|
| Location(s) : | | | | | | |
| Task(s): | # | Description | | | Qty. | |
| | | | | | | |
| | | | | | | |
| Details: | | | | | | |
| Equipment : | Item # | Description | Unit of Measure | Qty. | Unit Price | Extended Price |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | Discount Off List Price | | | | | |
| | Total | | | | | |

| AUTHORIZED SIGNATURES | | | |
|---|------|---|------|
| City of San José Authorized Representative | | Contractor Authorized Representative | |
| Signature | Date | Signature | Date |
| Name (Printed) & Phone Number | | Name (Printed) & Phone Number | |
| Department/Division & Title | | Department/Division & Title | |