



The City of San Diego

Staff Report

DATE ISSUED: 9/9/2020  
TO: City Council  
FROM: Sustainability Department  
SUBJECT: Supplemental Contract and Amendment for Streetlight Sensors

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Council District(s): Citywide

OVERVIEW:

This action seeks authorization to execute a supplemental contract and amendment to the Master Purchase Agreement with Ubicquia for services related to the streetlight sensor program.

PROPOSED ACTIONS:

1. Approve a Resolution authorizing the Mayor or his designee to execute a supplemental contract and amendment to the Master Purchase Agreement with Ubicquia for services related to the streetlight sensor program.
2. Approve a Resolution authorizing the Chief Financial Officer to appropriate an amount not to exceed \$1,542,600 from the Citizens Option for Public Safety (COPS) fund (200722) to provide Operational Costs, including Data Connectivity, Software as a Service, and Maintenance for Fiscal Year 2021.
3. Approve a Resolution authorizing the Chief Financial Officer to appropriate an amount not to exceed \$771,480 from the Community Parking District Administrative fund (200488) to provide Operational Costs for services provided during Fiscal Year 2020.
4. Approve a Resolution authorizing the Chief Financial Officer to expend an amount not to exceed \$6,170,400 from the Citizens Option for Public Safety (COPS) fund (200722) to provide Operational Costs, including Data Connectivity, Software as a Service, and Maintenance over the four year term and an amount not to exceed \$771,480 from the Community Parking District Administrative fund (200488) to provide Operational Costs for services provided during Fiscal Year 2020 and contingent upon the adoption of the Annual Appropriation Ordinance for the applicable fiscal year and

contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

#### DISCUSSION OF ITEM:

##### **Background**

On December 13, 2016, City Council approved an agreement with General Electric (GE) to upgrade City lighting infrastructure with intelligent streetlights from GE. The agreement included two separate components with two separate GE-affiliated entities: 1) the *GE Intelligent Lighting Master Purchase Agreement* (Purchase Agreement) with Current, Powered by GE (Current) and 2) the *California Master Lease Agreement* (Lease Agreement) with GE Government Finance, Inc (GEGF).

The Lease Agreement is a \$30.2M loan from GEGF to the City to finance the lease-to-own purchase and installation of approximately 8,200 adaptively controlled light-emitting diode (LED) fixtures and 3,220 "CityIQ" sensors. The Purchase Agreement defined the terms related to CityIQ products and services, not the LED fixtures. Specifically, the Purchase Agreement included data usage terms, warranty terms and service descriptions and pricing for the CityIQ sensors.

On April 23, 2018, City Council approved \$5M as part of the broader U.S. Housing and Urban Development (HUD) Entitlement Grant Program funding to be used to purchase and install smart streetlight equipment and infrastructure. From this funding, an additional 1,000 CityIQ sensors at a cost of \$2.9M were purchased. These sensors are currently in storage at the City and referred to as "Stored Sensors" in the proposed contract amendment.

This project is collectively referred to as the Outdoor Lighting Upgrade and Sensor Installation Project. The project is occurring in two phases. Phase 1 took place from Fall 2018 to Summer 2019 and included 4,700 light fixtures and 3,220 sensors. Phase 2 is expected to begin in CY 2021 pending the bidding of the installation services. Phase 2 will include the installation of the remaining 3,500 light fixtures acquired through the Lease Agreement. Phase 2 could include the installation of the 1,000 CDBG-funded sensors pending Council direction.

##### *What the Sensors Do*

The sensors work by using image-processing technology to turn images from sensor cameras into data about the urban environment within the public right-of-way. This software processing occurs locally on the sensor and the resulting data is sent to the cloud for access by City staff and the public. The camera footage is stored locally on the devices and continually overwritten once the data of interest is sent to the cloud. The streetlight sensors convert images into anonymized alpha-numeric data about pedestrian, bike, and vehicle movement (counts, direction, and speed), parking activity (collectively referred to as "event data"), and environmental conditions (temperature, pressure, and humidity).

##### *What the Sensors Do Not Do*

The streetlight sensors do not have audio capability (other than measuring decibel level), facial recognition or license plate reading functionality; the cameras in the streetlight sensors do not pan, tilt or zoom, nor can they view or record private property. All camera footage captured by the streetlight sensors is stored locally on the sensor and continually deleted after five days. The Police Department has access to the sensor footage during the five-day period prior to deletion if deemed necessary to collect evidence to enhance a criminal investigation.

The project moved from the Environmental Services Department (ESD) to the new Sustainability Department in late 2018 with the transfer of the Energy Division from ESD to Sustainability. In July 2019, Sustainability Department staff determined that the existing Purchase Agreement was not a viable

contractual mechanism for ongoing operational expenses as it was not clear that Council approved the expenditure of funding for future operations in the December 2016 Council action. Therefore, it was determined that an amended or new contractual instrument was needed to incorporate the description of and payment for ongoing operational services. Sustainability Department staff began working with the Purchasing and Contracting (P&C) Department to develop a sole source agreement to cover FY20 operational expenses while the Purchase Agreement was being amended. The sole source agreement was approved by P&C in October 2019. In late October 2019, the CAO determined that a contract amendment was preferred over a sole source agreement.

Concurrent to the efforts to create a viable payment mechanism for FY20 and beyond operational expenses and amend the Purchase Agreement, Sustainability Department staff determined that community outreach was lacking and led a series of 12 community meetings to ensure residents understood the new technology deployment. Based on community feedback as well as a desire for consistent city-wide guidance, it was determined that a Council Policy governing the use of data generated by the streetlight sensors was necessary and that contract amendments would not be presented to Council prior to a draft policy being considered.

On January 28, 2020, staff presented for consideration and approval to the PS&LN Committee a Draft Council Policy on Streetlight Sensor Data which had been developed based on community feedback, existing department policies and a review of best practices from other jurisdictions. The PS&LN Committee considered the draft policy but instead preferred to move forward with adopting a broader ordinance covering a larger cohort of technologies with the Committee Chair's office leading the effort.

In February 2020, GE Current, the manufacturer of the CityIQ sensors, notified the City of their intent to sell the CityIQ technology and all associated contracts (i.e., the Purchase Agreement). Accordingly, the Purchase Agreement amendment negotiations were put on hold until a new buyer was identified. On May 4, 2020, Ubicquia acquired all CityIQ assets including technology, related patents and contracts with major customers including the City of San Diego. The Lease Agreement was not affected by this acquisition and is still held by GEGF.

Due to the delays in receiving Council approval on a contract amendment to allow for payment for services in FY20 and beyond, Ubicquia disabled the CityIQ sensors. In the meantime, Ubicquia has maintained the video access for law enforcement use at no cost to the City until the contract amendments are completed.

On July 15, 2020, a draft surveillance ordinance was passed unanimously by the PS&LN Committee.

On July 21, 2020, City Council approved the Community Parking District (CPD) annual budget with an amendment stating that any further expenditures of CPD funds on the smart streetlight project would require additional Council approval. Relatedly, the 2019 CPD annual budget included \$771,480 in parking administrative funding to support the operations of sensors in the CPDs (based on 2,143 sensors at \$360/sensor, assuming all were functioning).

### **Future CityIQ Sensor Use**

Concurrent to these other efforts, the Sustainability Department staff have been working to identify use cases for the non-public safety data (i.e., mobility, environmental). While the mobility data is interesting and can be helpful in certain situations, the ongoing costs required to generate the mobility and environmental data, both in staff time and software-as-a-service fees, are significant. Therefore, weighing the benefits of the data against the current financial limitations facing the City, we will forego enabling the non-public safety functionality and data. If the supplemental contract and amendment is approved, the

CityIQ sensors will be able to be used exclusively as a public safety tool by the Police Department. CityIQ sensors will no longer generate the non-public safety data and the Sustainability Department would no longer be involved in the sensor-portion of the project after assisting in a transition of the project to the Police Department. The Police Department would manage the system operations, maintenance, and contract with Ubicquia. The proposed supplemental contract and amendment allows for the City to enable the non-public safety data collection in the future if there is interest and financial ability to support.

### **Proposed Contract Amendment Summary**

Staff is recommending a supplemental four-year contract and amendment to the Purchase Agreement, originally entered into by the City with GE and since acquired and held by Ubicquia. The supplemental contract and amendment to the Purchase Agreement includes the following major components:

- Updated terms of data ownership and management
- Requirement by Ubicquia to replace all faulty sensors including paying for equipment removal and installation labor costs (since installation approximately 30% of sensors have become nonoperational)
- Options for City to return to Ubicquia the 1,000 CDBG-funded sensors for a future service credit or other Ubicquia equipment
- Mechanism for City to pay Ubicquia \$771,480 for services received in FY20
- Updated services agreement (Exhibit B) that defines not-to-exceed annual CityIQ sensor operational expenses through FY24:
  - o Software-as-a-Service: up to \$1,152,000/yr (\$360/sensor/year for 3,200 sensors)
  - o Connectivity Services: up to \$345,000/yr (28 terabytes of data)
  - o Maintenance Services: up to \$45,600/yr
- Renewal of CityIQ sensor operational services for four years (FY21, FY22, FY23, FY24)

### **CDBG-funded Sensor Options**

To meet CDBG program obligations, the City needs to act on the 1,000 sensors purchased with CDBG funds and currently in City storage. If the City installs the 1,000 sensors as originally intended, the CDBG program obligations will be fully met. If we do not install nor return using one of the options below, the CDBG obligations will not be met and the City will be required to pay back the CDBG program the \$2.9M spent on CityIQ sensors from the General Fund.

If the City decided against installing the 1,000 sensors, the supplemental contract and amendment to the Purchase Agreement provides two options to return the sensors to Ubicquia:

- 1) Return for refund: Ubicquia will provide a cash refund for the equipment purchased with CDBG funding. The cash refunds would be received evenly over the 4 years of the City's contract and would be payable back to the CDBG funds or, in the event of immediate repayment request by HUD, the General Fund.
- 2) Return for Ubicquia products: Ubicquia will exchange the CityIQ sensors for other equipment of interest to the City. The community benefits enabled by the new equipment could potentially meet CDBG program obligations and thus avoid a repayment of the CDBG funds.

Under both scenarios of returning the sensors to Ubicquia, a \$567/sensor restocking fee will be charged by Ubicquia. Neither the value of this restocking fee, \$567,000, nor the \$212,500 in tax originally paid on the sensors, will be realized in the project and thus may need to be paid back to HUD and the CDBG program. City staff will advocate for the value of the restocking fee and tax to be forgiven by HUD. If HUD does not forgive this fee, the General Fund will be required to pay back HUD.

City Strategic Plan Goal(s)/Objective(s):

Goal #1: Provide high quality public service

Objective #4: Ensure equipment and technology are in place so that employees can achieve high quality public service

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #1: Protect lives, property and the environment through timely and effective response in all communities.

Objective #2: Reduce and prevent crime

Objective #4: Foster services that improve quality of life

Goal #3: Create and sustain a resilient and economically prosperous City.

Objective #1: Create dynamic neighborhoods that incorporate mobility, connectivity and sustainability.

Objective #4: Prepare and respond to climate change.

Objective #5: Enhance San Diego's global standing.

Fiscal Considerations:

<b>Costs</b>	<b>Total</b>	<b>Source</b>
FY20 Operational Costs	\$771,480	Community Parking District Administrative Funding
FY21-24 Operational Costs (Data connectivity, Software-as-a-Service, Maintenance)	\$1,542,600/FY	Police Department State COPS Allocation Funding

Although the City will be seeking forgiveness by HUD for the \$567/sensor restocking fee and \$212,500 in tax paid for the previous 1,000 sensors, there is the possibility that this additional \$567K and \$212,500 will be payable to HUD. If forgiveness is not given, it will be addressed in the following quarterly monitoring report prepared by DoF.

If we do not install nor return using one of the options noted in the CDBG-funded Sensor Options in the Discussion of Item section, the CDBG obligations will not be met and the City will be required to pay back the CDBG program the \$2.9M spent on CityIQ sensors from the General Fund.

Charter Section 225 Disclosure of Business Interests:

Ubicquia LLC does not have any natural person that owns more than 10% of the company or that would receive more than 10% of the contracted amount.

Environmental Impact:

This activity is not a project pursuant to CEQA Guidelines Section 15378(b)(2), which includes continuing administrative or maintenance activities, and 15378(b)(4), which includes the creation of government funding mechanisms or other government fiscal activities. As such, this activity is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3).

Equal Opportunity Contracting Information (if applicable):

This agreement is subject to the City's Equal Employment Opportunity Outreach Program (San Diego Ordinance No. 18173, Municipal Code Sections 22.2701 through 22.2708) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

Previous Council and/or Committee Actions:

The Council authorized a purchase and service agreement with Current, powered by GE, a subsidiary of General Electric and a Master Lease Agreement with GE Government Finance, Inc at the Dec 6, 2016 City Council meeting. The master lease and purchase agreement funded the retrofit of approximately 14,000 City-wide outdoor lighting with more energy efficient technology and sensors.

The Sustainability and Police Departments jointly presented an Information Item on the streetlight sensor project at the June 6, 2019 Public Safety and Livable Neighborhoods (PS&LN) Committee. The Sustainability Department provided an update on the project and the planned community outreach at the June 6<sup>th</sup> PS&LN Committee meeting with plans to provide a follow-up report after the community outreach concluded. The Sustainability Department sent a memo to City Council on Oct 14, 2019 summarizing the community outreach. The Policy Department provided an update on the use of streetlight sensor video footage to enhance criminal investigations.

The Sustainability Department presented for consideration and adoption a Draft Council Policy for Streetlight Sensor Data Use at the January 29, 2020 PS&LN Committee. The Committee did not adopt the proposed Draft Policy.

This item will be heard by the Public Safety & Livable Neighborhoods Committee prior to full Council.

Key Stakeholders and Community Outreach Efforts:

Please refer to the *Background* section above.

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