

## SUPPLEMENTAL CONTRACT AND AMENDMENT

This Supplemental Contract and Amendment (“**Contract**”), which is entered into in September \_\_, 2020 (“**Contract Date**”) and Effective as of July 1, 2020 (“**Effective Date**”) by and between the City of San Diego, a California municipality (“**Customer**”) and Ubicquia, LLC (“**Ubicquia**”), as successor in interest to Current Lighting Solutions, LLC (“**Current**”) and Current, Powered by GE (“**GE**”), amends and supplements that certain, GE Intelligent Lighting Master Purchase Agreement.” dated February 10, 2017 (“**Agreement**”). Customer and Ubicquia will be referred to as the “**Parties**” or individually as a “**Party.**”

### RECITALS

**Whereas** Customer and GE entered into the Agreement as part of the Intelligent Cities Project, San Diego CA (Project) between GE and Customer (the “**Project**”), for the provision of a smart city solution by GE to the Customer, including the deployment of intelligent nodes (“**Nodes**”) and connectivity services in association therewith (the “**Intelligent Lighting Solution**”);

**Whereas** on or about March 28, 2017, Customer purchased 3,220 Nodes that included one-year of Software as a Services (SaaS) included in the cost;

**Whereas** on or about August 6, 2018, GE issued a quote to the City with respect to the purchase of additional Products and Services pursuant to the Agreement (“**Quote**”);

**Whereas** on or about September 4, 2018, Customer issued a purchase order No. 450014315 based on the Quote (the “**Purchase Order**”) for the purchase of additional 1,000 Nodes and Services using Community Development Block Grant (CDBG) funding;

**Whereas** on or about March 28, 2019, GE issued a quote to Customer for the renewal and extension of the Software as Services (“**SaaS**,” also referred to in the Agreement as Application Programming Interface or API hosting services) in connection with the 3,211 installed Nodes (the “**2019 GE Services Quote**”), for such Services to be provided from July 1, 2019 until June 30, 2020;

**Whereas** on or about April 1, 2019, GE sold Current to American Industrial Partners, LLC and Current retained all rights and obligations under the Agreement;

**Whereas** on or about June 27, 2019, Customer issued a Memorandum to Current accepting the GE 2019 Services Quote (“**the City Memo**”), upon which Current relied and continued providing the SaaS services from July 1, 2019 until June 30, 2020;

**Whereas** on April 30, 2020, Ubicquia purchased from Current all or substantially all of Current’s assets pertaining to the SaaS CityIQ business. Pursuant to such transaction, Current assigned to Ubicquia and Ubicquia assumed Current’s rights and obligations under the Agreement with respect to the CityIQ goods and services. This assignment was limited to the CityIQ aspects of the Agreement only, and expressly excluded the other documents and elements in the Project and the Agreement, including without limitation the California Master Lease Agreement dated February 10, 2017 and any rights and obligations related to the LED products and lightgrid lighting controls services provided by GE, which shall remain the sole obligation of Current;

**Whereas** as of the Contract Date, certain Nodes of the 3,220 Nodes delivered and installed prior to May 30, 2020, are unresponsive and subject to a City Warranty claim (the “**Unresponsive Nodes**”), and 55 of these Unresponsive Nodes have been randomly chosen, removed and tested by Current to determine the reason(s) such Nodes are unresponsive (the “**Test Nodes**”);

**Whereas** as of the Contract Date, the City has 1,000 Nodes in storage, delivered under the Purchase Order, which security certificates and firmware have expired (the “**Stored Nodes**”);

**Whereas** SaaS Services were provided to the Customer from July 1, 2019 to June 30, 2020 (Fiscal Year 2020) and as of the Effective Date, payment for such SaaS Services have not been made by the City; and

**Whereas** the Parties wish to address and resolve the issues of the Unresponsive Nodes, Test Nodes, and Stored Nodes, and amend the Agreement, as well as supplement the Agreement for the purchase of new Products and Services, pursuant to the terms and conditions contained herein.

## **AGREEMENT**

Now therefore, for good and valuable consideration, receipt of which is hereby acknowledged, Ubicquia and Customer hereby agree as follows:

Ubicquia, as purchaser and successor to Current’s interest in the CityIQ assets and SaaS services, expressly assumes all obligations and rights in the Agreement which relate to the CityIQ functions, with the express exception of the California Master Lease Agreement and any functions which relate solely to lighting or controls thereof. With respect to such CityIQ functions (including hardware and warranties) and SaaS services, this document constitutes a separate Supplemental Agreement to the Agreement, and City and Ubicquia shall hereby have their own agreement with respect to all CityIQ hardware and services which do not relate to the control of lighting. All provisions of the Agreement which relate solely to lighting or control thereof shall remain under contract between City and Current. No part of this document shall be construed as altering City’s obligations under the California Master Lease Agreement with GE Government Finance. Upon this agreement the following terms are further agreed between City and Ubicquia:

### **1. Data Ownership and Management**

#### **1.1 Definitions:**

a) The following definitions in the Agreement are hereby amended as follows:

(i) In Section 1.8 “Confidential Information,” the sentence “GE’s Confidential Information includes Processed Data” is hereby deleted in its entirety.

(ii) Section 1.20 is hereby replaced by:

1.20. “**Processed Data**” means 1) all data created by Ubicquia applying Processing Technology to Source Data, and 2) all other data created from Source Data by Customer or any third party, and provided to Ubicquia pursuant to the terms hereunder.

(iii) Section 1.24 is hereby replaced by:

1.24. “**Source Data**” means all data that is sensed, observed, or gathered from the individual or collective outputs of the Products or Services, and if for the purpose of

providing the Services, from any other technology or services licensed from Ubicquia or any other Customer equipment or services.

- b) Sections 1.28 and 1.29 are hereby added to the Agreement:
  - (i) 1.28. “**Node Data**” means Source Data and Processed Data.
  - (ii) 1.29. “**Processing Technology**” means the analytical technology, methodology and other proprietary savoir faire, including algorithms, code, software, and other processes created, licensed, and/or otherwise controlled by Ubicquia to adapt, aggregate, and/or transform Source Data into Processed Data. Processing Technology shall be considered part of GE Technology and the sole and exclusive property of Ubicquia and/or its licensor(s).
- c) Capitalized terms not defined in this MOU shall have the definition provided in the Agreement.

#### 1.2 Ownership of Data & Intellectual Property:

- a) Node Data. (i) In the Agreement at Sections 4.4, 4.7, 11.2, and 11.3, instances of “Source Data” are hereby replaced with “Node Data.” (ii) Solely on behalf of the Customer, Ubicquia, shall collect, store, and provide Customer with access to Node Data in accordance with a Software as a Service (“SaaS”) agreement as outlined in Exhibit B. (iii) All Node Data shall be owned by the Customer. (iv) Customer hereby provides to Ubicquia a limited, royalty-free, non-exclusive right and license to all Node Data solely for the purpose of providing the Services to Customer and improving Ubicquia’s product and service offerings. (v) Customer is solely responsible for compliance with all Applicable Law (including Customer’s policies) in connection with the collection, receipt, and use of the Node Data. (vi) Customer shall indemnify, defend and hold harmless Ubicquia, along with its parent, affiliates, officers, directors, employees, contractors and assigns, from any claim resulting from Customer’s collection, receipt, and use of the Node Data and Ubicquia’s permitted use thereunder. (vii) Upon termination of the Agreement, Ubicquia will return Processed Data to the Customer as such is available to Ubicquia at the time. After returning the Processed Data to the Customer in a usable format, Ubicquia is entitled to keep and/or delete the Node Data stored on Ubicquia’s cloud storage pursuant to Applicable Law and in accordance with its standard data and document retention policy, and all Node Data stored on a Node will be deleted in the normal course of Node re-use or disposal. (viii) Except where Ubicquia obtains the City’s prior written approval, Ubicquia shall perform all of the Services only from or at locations within the geographic boundaries of North America. Any City approval for the performance of Services outside of the geographic boundaries of North America shall be limited to the specific instance and scope of such written approval, including the types of Services and locations involved.
- b) Processing Technology. Ubicquia shall own all right, title and interest in the Processing Technology and all references to Processed Data in the Agreement shall be replaced with Processing Technology.

#### 1.3 Amendments to Section 7 “Intellectual Property”.

1.3.1 Section 7.1 of the Agreement is hereby amended to remove the following language:

“As between the Parties, (a) Customer owns all right, title and interest in the Source Data, and (b) GE owns all right, title and interest in the Processed Data. To the extent that exclusive title to any part of the Processed Data does not automatically vest in GE, Customer hereby assigns and agrees to assign to GE all right, title and interest in and to the Processed Data that Customer may have, including all Intellectual Property Rights relating thereto.”

1.3.2 Section 7.2(c) of the Agreement is hereby removed.

## **2. Unresponsive Nodes**

For the six (6) month period following the Contract Date (the “**Claim Period**”), to the extent it is determined that an Unresponsive Node is not functioning due to a hardware warranty claim (“**Warranty**” as provided in Exhibit E of the Agreement), Ubicquia shall replace the Unresponsive Node pursuant to its RMA process outlined in Exhibit E. In addition, upon receipt of the payment for prior services described in Section 5 below and to the extent a claim is made within the Claim Period, Ubicquia agrees to arrange and pay for the removal and re-installation of the Unresponsive Nodes in breach of the Warranty (“**Labor Assistance**”). Labor Assistance to be provided by a sub-contractor of Ubicquia’s choice, upon the understanding that such work is public work with all associated requirements including, but not limited to, insurance for the Customer and payment of prevailing wages. Customer agrees to provide Ubicquia the permits, authorization and licenses necessary for the provision of the removal and re-installation of the Unresponsive Nodes hereunder. For the avoidance of doubt, to the extent that an RMA claim is submitted for an Unresponsive Node as defined after the aforementioned Claim Period, the Labor Assistance shall no longer be applicable.

## **3. Stored Nodes**

3.1 Use of the Stored Nodes by Customer. To the extent that Customer decides to install the Stored Nodes and subscribe to the company’s SaaS and Connectivity Services within the next twelve (12) months with respect to such Node(s), Ubicquia shall update all security certificates and firmware at its sole cost with respect to such Node(s) and Customer shall pay the Standard Commissioning Fee, SaaS and Connectivity Fees outlined in Exhibit B to activate these nodes.

3.2 Return of the Stored Nodes by Customer. To the extent that Customer decides to return the Stored Nodes to Ubicquia within six (6) months of the Contract Date, Customer shall receive a credit for the Returned Nodes purchased by Customer, less a restocking fee, as follows:

- \$2,700/Returned Node, less \$567/Returned Node for restocking (“**Node Credit**”).

3.3 Node Refund/Credit. Customer may apply the Node Credit for either Ubicquia Services or Products.

- Refund: Node refund will be paid as follows: thirty (30) days after receipt of payment of the full invoice for Services to be provided by Ubicquia for the upcoming year pursuant to Exhibit B, Ubicquia shall re-pay to the City the portion of the Node refund applicable to that particular fiscal year. Node refund will be available as follows: ¼ in

FY21; ¼ in FY22; ¼ in FY23 and ¼ in FY24 (“FY21,” “FY22,” “FY23” and “FY24” are defined in Exhibit B).

- Purchase of Products: Node Refund/Credit may be applied in whole or in part toward the purchase by Customer of Ubicquia Products, including but not limited to Ubimetro, UbiHub, or Ubicell. Node Refund/Credit applied toward Ubicquia Products may be wholly applied in FY21 as defined in Exhibit B.
- Node Refund/Credit Forfeiture: Unless applied pursuant to Section 3.3 hereunder, Customer hereby acknowledges and agrees that any unused Node Refund/Credit will be forfeited by the Customer in the event that Customer does not renew its Services in full in any upcoming years, FY21, FY22, FY23, and FY24.

#### **4. Renewal of Services**

Customer hereby renews the Services in connection with all installed Nodes (up to 3,200), as follows:

- a) Customer agrees to use Ubicquia to provide Connectivity Services (as outlined in Exhibit B) for a period of four (4) years from Effective Date, pursuant to the pricing and terms contained in Exhibit B.
- b) Customer agrees to use Ubicquia to provide SaaS Services (as outlined in the Exhibit B) for a period of four (4) years from Effective Date, pursuant to the pricing and terms contained in Exhibit B.
- c) Nothing contained in Sections 5 (a) and 5(b) shall be construed as limiting Customer’s ability to purchase additional Products and Services, and to the extent that Customer does commission additional Products or Services, such shall be subject to the pricing listed in Exhibit B.
- d) All payments for Connectivity Services and SaaS Services are due within thirty (30) days from receiving the annual invoice.
- e) Customer is solely responsible for compliance with all Applicable Law in relation to its receipt and use of SaaS Services. Customer may not sell, resell, reframe, distribute, rent or lease the SaaS in any manner without Ubicquia’s prior written approval. Ubicquia may suspend or discontinue SaaS Services in its sole discretion if Customer does not comply with the terms of this Section 4 of this MOU.
- f) Ubicquia will discontinue or suspend Services to all or some of the Nodes if directed to do so in writing by the Customer within twenty-four (24) hours of the written request. Customer acknowledges and agrees that such suspension or termination of the Services shall not be construed as termination of this Amendment and Customer is not entitled to a refund or credit, based on such suspension or termination of the Services.
- g) For purpose of clarification, SaaS Services shall include access to the sets of APIs outlined in the Exhibit B. Ubicquia may from time to time offer additional Ancillary Services at additional costs to the Customer. To the extent Customer requests any Ancillary Services, the Parties shall execute a Statement of Work pursuant to Section 5 of the Agreement.

#### **5. Payment for Prior Services**

The City shall pay Ubicquia Seven Hundred and Seventy Thousand Dollars (\$770,000), for Services performed and received by Customer from July 1, 2019 until June 30, 2020 pursuant to the 2019 GE Quote and the City Memo. This amount shall be paid within thirty (30) days from receipt of invoice for such prior Services. Customer hereby acknowledges and agrees that Ubicquia's obligations under Sections 2 and 3 of this Contract shall be subject to receipt by Ubicquia of the full amount under this Section 5. Nothing contained herein shall be construed as to limit any Warranty claims the Customer may have in connection with the Unresponsive Nodes pursuant to the terms and conditions stated in the Warranty (Exhibit E of the Agreement).

**6. Warranty & Support Services**

The Warranty referred to in Section 10.1 is attached as Exhibit E (and not Exhibit D). The Support Services referred to in Section 10.2 is attached as Exhibit D (and not Exhibit C).

7. Exhibit B of the Agreement is hereby deleted in its entirety and replaced with Exhibit B attached hereto.
8. Exhibit C of the Agreement is hereby deleted in its entirety, and Ubicquia shall make Service Guides available to Customer from time to time (as such are updated from time to time).

This Contract shall amend, modify and supplement the Agreement. This Contract shall be considered by the Parties as an Order Form as defined in the Agreement. Except as set forth in this Contract, the Agreement remains unaffected and shall continue in full force and effect in accordance with its terms and conditions. In the event of conflict between the terms of this Contract and the terms of the Agreement, the terms of this Contract shall supersede and control. Any terms not defined hereunder shall have the same meaning as provided in the Agreement.

This Contract may be executed and delivered by electronic signature by any of the Parties and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received. This MOU may be executed in counterparts, which taken together, shall constitute one and the same instrument.

In witness whereof, this Contract is signed by the Parties' duly authorized representatives.

UBICQUIA LLC

CITY OF SAN DIEGO, A CALIFORNIA MUNICIPALITY

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By Ian Aaron/CEO

By \_\_\_\_\_ / \_\_\_\_\_

## Exhibit B: Schedule of Products and Services with Pricing

The following is an updated Price List of Products and Services available from Ubicquia to the City of San Diego (“Customer”) as of the Effective Date.

### 1. Pricing for Incremental CityIQ Nodes

If the Customer wishes to procure additional CityIQ nodes, orders are expected to include commissioning and at least one year of SaaS based on table 2 below. The exception to this would be if the customer wishes to hold a limited number of CityIQ nodes as safety stock for efficient replacement in case of unforeseen events (e.g. pole knock down due to traffic accident). Stored Nodes if ultimately installed will be charged the Standard Commissioning Fee.

Description	Price (one-time)
Horizontal or Vertical CityIQ Node	\$3,500/node
Standard Commissioning Fee	\$250/node

### 2. Pricing for Connectivity Services

Connectivity describes the data backhaul communication method for the CityIQ Node. Pricing below is for a wireless backhaul via LTE. To the extent, Customer requests the commissioning of more than 3,200 Nodes, the Parties will mutually agree to a pricing schedule with respect to the excess Nodes.

Year	Number of Nodes	Max TB	Price
FY21: July 1, 2020 – June 30, 2021	Up to 3,200	28	Not to exceed \$345,000
FY22: July 1, 2021 – June 30, 2022	Up to 3,200	28	Not to exceed \$345,000
FY23: July 1, 2022 – June 30, 2023	Up to 3,200	28	Not to exceed \$345,000
FY24: July 1, 2023 – June 30, 2024	Up to 3,200	28	Not to exceed \$345,000

\* Connectivity Services are based on standard node usage and any additional API, third party applications or changes made by Customer, or on behalf of Customer, to any Services may increase airtime and result in data overages and additional fees.

### 3. Pricing for SaaS Services

SaaS describes the API Subscription Plan enabling Customer to access data collected from sensors within the CityIQ node. In addition to the published APIs detailed below (and referenced within the CityIQ Service Guide), SaaS also includes (1) periodic OTA firmware updates, (2) cybersecurity monitoring, (3) cloud monitoring and maintenance, (4) access to Ubicquia’s help desk for questions, trouble tickets, and support as well as access to both (5) Node Manager and (6) Control Console software platforms allowing Customers to manage their CityIQ Node deployment as well as view and control API usage across your organization, partners and third parties.

Published APIs as of the Effective Date:

- Traffic Planning API
- Parking Planning API
- Pedestrian Planning API
- Bicycle Planning API

- Media API
- Environmental Planning API

SaaS pricing below is per node, per year for up to 3,200 nodes; additional nodes shall be subject to additional fees.

Year	Price/Node	Extended Price
FY21: July 1, 2020 – June 30, 2021	\$360	\$1,152,000*
FY22: July 1, 2021 – June 30, 2022	\$360	\$1,152,000
FY23: July 1, 2022 – June 30, 2023	\$360	\$1,152,000
FY24: July 1, 2023 – June 30, 2024	\$360	\$1,152,000

\* The price for FY21 shall be prorated by \$30/Node/month for Unresponsive Nodes that are being replaced by Ubicquia under Section 2 of the Contract, in the form of credit or refund, to be calculated on a quarterly basis, until such time as such Unresponsive Nodes fully replaced.

#### 4. Reactivation Fee

A node reactivation fee of \$350/node applies to every node that has been deactivated at Customer’s request. This fee includes reissuing security certificates, and updating firmware, amongst other activities. The company will make every effort to reactivate nodes OTA, however, reactivation may require nodes to be shipped back to the company’s manufacturing facility at the Customer’s expense. Please note, reactivation services do not include commissioning activities (standard commissioning fees outlined in Section 1 would also apply).

#### 5. Maintenance Service Fee

Maintenance service fee includes field support services for malfunctioning or unresponsive nodes subject to a Warranty claim that require assistance and support in the field. Maintenance services are provided according to Ubicquia standard practices. Prices are based on 3,200 Nodes. To the extent, Customer requests the commissioning of more Nodes, the Parties will mutually agree to a pricing schedule with respect to the excess Nodes. For the avoidance of doubt the maintenance service fee pursuant to this section is separate and apart from the Labor Assistance referred to in Section 2 of the Contract.

Year	Number of Nodes	Price
FY21: July 1, 2020 – June 30, 2021	Up to 3,200	Not to exceed \$45,600
FY22: July 1, 2021 – June 30, 2022	Up to 3,200	Not to exceed \$45,600
FY23: July 1, 2022 – June 30, 2023	Up to 3,200	Not to exceed \$45,600
FY24: July 1, 2023 – June 30, 2024	Up to 3,200	Not to exceed \$45,600

#### 6. Ancillary Services

Customer may request the Company to provide services in addition to the Products and Services defined above. In such case, Company and Customer will enter into a Statement of Work for Ancillary Services pursuant to Section 5 of the Agreement. Examples include but are not limited to the following:

- Explore alternative methods of data backhaul outside of the default configuration. For example:
  - Wireless backhaul via alternative carriers
  - Wireless backhaul via Wi-Fi
  - Wireline backhaul
- Develop APIs and/or services to expose data specific to customer defined use cases.
- Customer and Company are in the process of reassessing the CityIQ network and existing node configurations. This reassessment process, expected to take place within 6 months from the Effective Date, will include the further reconfiguration of up to 1,000 nodes to better align with Customer's current needs. After this reassessment process is complete, Company reserves the right to apply a reasonable fee for any change requests of CityIQ solution architecting and recommissioning to redefine analytics captured on a desired Node(s), on a case-by-case basis.

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