

**MEMORANDUM OF UNDERSTANDING RE: COST-SHARING OF EXPENSES TO
MAINTAIN A COMMUNITY WIRELESS NETWORK FOR STUDENTS AND FAMILIES
IN THE EAST SIDE OF SAN JOSÉ COMMUNITIES**

This Memorandum of Understanding (“MOU”) dated _____, 2020, is entered into by and between East Side Union High School District (“ESUHSD”), and the Berryessa Union School District (“BUSD”), the Oak Grove School District (“OGSD”, the Franklyn-McKinley School District (“FMSD”), the Evergreen Elementary School District (“EESD”), the Mount Pleasant Elementary School District (“MPESD”), the Alum Rock Union School District (“ARUSD”) and Orchard School District (“OSD”) (collectively, the “Districts”). Each of the ESUHSD and each of the Districts are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The Parties share the common goal of providing greater access to the internet for students and residents within the boundaries of each of the Districts in San Jose.
- B. The ESUHSD’s and the Districts’ shared purpose in supporting the Project is to advance student academic achievement, to facilitate distance learning when needed, to provide opportunities for students to research career and university possibilities, and to foster student safety during out of school time.
- C. On or about October 28, 2016, the ESUHSD and the City of San José (“City”) entered into a Funding Agreement relating to installation of a community wireless network within the territorial jurisdiction of the ESUHSD. The Funding Agreement was amended by that certain First Amendment to Funding Agreement approved by the ESUHSD and the City of San José on or about _____ (the “First Amendment”). A true and correct copy of the Funding Agreement and the First Amendment is attached hereto as Exhibit “A” and are collectively referred to herein as the “Funding Agreement”.
- D. Pursuant to the Funding Agreement, the City has incurred certain expenses relating to the installation of wireless access points at various City facilities such as light poles, traffic signals, towers, community centers and other City owned structures; the management of the installation; and maintenance of the wireless network. Also pursuant to the Funding Agreement, the ESUHSD has funded the cost of the installation of wireless access points and startup and maintenance of ongoing network services at mutually agreed upon City facilities including, but not limited to, light poles, traffic signals, towers, community centers and other City owned structures, in accordance with the terms of the Funding Agreement (“District Community Wireless Project” or “Project”).
- F. Pursuant to the Funding Agreement, the City and ESUHSD have completed the installation of the community wireless network in the James Lick High School attendance area and have commenced installation of the community wireless

network in the William C. Overfelt High School and the Yerba Buena High School attendance areas.

- G. The City and the ESUHSD intend to install the community wireless network in all or part of the attendance areas for the ESUHSD's Andrew Hill, Evergreen Valley, Independence, and Oak Grove High Schools to provide wireless access for students, parents and staff in those neighborhoods. The ESUHSD's Andrew Hill, Evergreen Valley, Independence, James Lick, Oak Grove, William C. Overfelt and Yerba Buena High Schools are hereinafter referred to as the "ESUHSD Sites".
- H. The attendance areas for each of the participating Districts is located, in whole or in part, in the attendance areas for one or more of the ESUHSD Sites.
- I. The ESUHSD and the Districts desire to share in the cost and expense of operating and maintaining community wireless network, once installed, for a period of three (3) years.

Now therefore, in consideration of the mutual agreements, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the ESUHSD and the Districts agree as follows:

1. Installation, Operations and Maintenance; Funding and Cost-Sharing

- A. **Installation.** ESUHSD and the City will fund the purchase and installation of all equipment and infrastructure for the installation of the community wireless network within the ESUHSD Sites in accordance with the terms of the Funding Agreement. City and District shall mutually agree on the locations for the installation of all Project equipment in accordance with the terms of the Funding Agreement. The ESUHSD and the City will maintain responsibility for engineering the wireless network which will be based on, among other things, cost and the areas of greatest concentration within the various attendance areas.

(1) Once installed, the Districts' respective community access will be through the City's open internet. In addition, the Districts can utilize ESUHSD's Identity Management system or, alternatively, the Parties will formulate a plan to direct each District's user traffic to their respective Identity Management system.

(2) The Parties will meet and confer in good faith to ensure adequate protocols to preserve and maintain student confidentiality of all student records transmitted through the community wireless network.

- B. **Operations and Maintenance For Years 1 and 2 Following Completion.** Once installation is completed, the ESUHSD and the City will fund operations and maintenance of the community wireless network within each of the respective separate ESUHSD Sites for a period of two (2) years from the date of completion. The scope of maintenance and ongoing network services shall be

based on the agreement between the City and the City contractor, SmartWave or similarly qualified contractor.

C. Operations and Maintenance For Years 3, 4, and 5 Following Completion.

Each of the Districts will contribute to the operations and maintenance of the community wireless network within each of the respective separate ESUHSD Sites for a period of three (3) years from and after the date of completion at each ESUHSD Site in accordance with the contribution schedule attached as **Appendix 1** hereto.

(1) ESUHSD will notify each District in writing of the completion date of the community wireless network within such District (the "Completion Notice"). Within sixty days of such written notification, each such District shall pay to the ESUHSD one third (1/3) of its total share of operation and maintenance expenses as set forth in **Appendix 1**. Thereafter, for each of the two subsequent years and on the anniversary date of the Completion Notice, each District shall pay to ESUHSD a one-third share of its total share of operation and maintenance expenses as set forth in **Appendix 1**. Any district may pay upfront to ESUHSD their cost for years 3, 4, and 5. Any grants received by ESUHSD on behalf of member districts of the East Side Alliance, will be distributed on a pro rata share.

(2) The ESUHSD, the Districts and the City are each subject to laws which limit their ability to incur debt in future years. Nothing in this MOU shall constitute an obligation of future legislative bodies of the ESUHSD, the Districts or the City to appropriate funds for purposes of the MOU.

2. Extension of Community Wireless Network in Additional Neighborhoods.

- A. The ESUHSD and the City may, in their discretion and after additional analysis, determine to add additional sites/neighborhoods within the community wireless network. In such event, the total share of operation and maintenance expenses as set forth in Appendix 1 will be adjusted for the Districts that are served by those added areas. The average maintenance cost at this time is projected to be \$50,000 per neighborhood and each District would be expected to pay its pro rata share based on percentage of its attendance area within such neighborhood.
- B. The city has identified fiber issues or vacancies that the City and ESUHSD are working to mitigate and resolve in the Silver Creek High School and Mt. Pleasant High School neighborhoods. The Parties understand that, as such, the installation costs for the fiber have not been developed and as of this date there is not a reliable timetable for installation. Once a mitigation/resolution plan is determined, the ESUHSD and the City will prepare and distribute a timetable and budget to complete those neighborhoods.

3. Term of the MOU

- A. The term of this MOU shall commence on the date this Agreement is fully executed by the Parties ("Execution Date") and extend for a period of five (5) years thereafter.
- B. Any Party may terminate this Agreement by providing thirty (30) days written notice to the other party. In the case of any conflict between the terms of this MOU and the Funding Agreement as to the rights and responsibilities of the ESUHSD or the City, the Funding Agreement shall control.
- C. Following termination of this MOU, title to all equipment shall remain with the City.

4. Confidentiality of Data and Information

- a. In connection with the services to be provided in this Agreement, City shall not gather or maintain in its records any information obtained from social media of any user of the wireless access and services to be made available under the Agreement.
- b. Any and all pupil records accessed or transmitted by any District's authorized users, including District students and staff, using the wireless services to be provided hereunder shall continue to be the property of and under the control of such District.
- c. In the event of a breach of City's network, ESUHSD shall report such breach to each District within one (1) business day of receiving written notification of the breach.

5. Notices

Any and all notices required to be given to a Party hereunder shall be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the Parties at the following address or such other address as is provided by either Party in writing:

District: East Side Union High School District
Attention: Chief Technology Officer
830 North Capital Avenue
San Jose, Ca 95133

District: _____

District: _____

District: _____

District: _____

District: _____

District: _____

6. Construction

Every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party. All pronouns and variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require.

7. Headings

Section, paragraph and other headings contained in this Agreement are for reference purposes only and shall not be used to describe, interpret, define or limit the scope, extent, or intent of this Agreement or any provision hereof.

8. Entire Agreement

This MOU constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties with respect thereto.

9. Governing Law and Venue

- A. This MOU and the respective rights and obligations of the Parties hereto shall be construed and interpreted in accordance with the laws of the State of California, without reference to its conflict of laws provisions.

- B. In the event that suit is brought by any Party to this MOU, the Parties agree that venue will be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

10. Counterparts

This MOU may be executed in one or more counterparts, each of which shall be considered to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the ESUHSD and the Districts have each executed this MOU as of the date and year indicated next to the signatures below.

EAST SIDE UNION HIGH SCHOOL
DISTRICT,
a political subdivision of the State of California

CHRIS D. FUNK
Superintendent

_____ SCHOOL
DISTRICT,
a political subdivision of the State of
California

_____ SCHOOL DISTRICT,
a political subdivision of the State of California

Superintendent
_____ SCHOOL
DISTRICT,
a political subdivision of the State of
California

Superintendent
_____ SCHOOL DISTRICT,
a political subdivision of the State of California

Superintendent
_____ SCHOOL
DISTRICT,
a political subdivision of the State of
California

Superintendent

_____ SCHOOL DISTRICT,
a political subdivision of the State of California

Superintendent

Superintendent

EXHIBIT A
FUNDING AGREEMENT

APPENDIX 1

High School Attendance Area Served	Participating Feeder District #1	Participating Feeder District #2	Participating Feeder District #3	Participating District	Total District Contribution Over Three Year Period
Andrew Hill H.S.				1. Alum Rock	\$313,000.00
Evergreen Valley H.S.				2. Berryessa	\$119,054.00
Independence H.S.				3. Evergreen	\$156,650.00
James Lick H.S.				4. Franklin McKinley	\$344,630.00
Oak Grove H.S.				5. Mt Pleasant	\$78,325.00
W.C. Overfelt H.S.				6. Oak Grove	\$156,650.00
Yerba Buena H.S.				7. Orchard	\$28,197
				Total Districts' O&M Contributions for Years 3, 4 and 5	\$1,196,506.00