

DRAFT ON CALL SERVICES AGREEMENT BETWEEN CITY OF SUNNYVALE AND HETNET WIRELESS, LLC FOR ON-CALL SERVICES FOR DEPARTMENT OF PUBLIC SAFETY

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and HETNET WIRELESS, LLC ("CONTRACTOR").

WHEREAS, CITY desires to secure specialized services in relation to plan review and inspection services for indoor public safety radio coverage; and

WHEREAS, CONTRACTOR represents that it, and its sub-contractors, if any, possess the professional qualifications and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONTRACTOR

CONTRACTOR shall provide services in accordance with Exhibit "A" entitled "Scope of Work." All exhibits referenced in this Agreement are attached hereto and are incorporated herein by reference. To accomplish that end, CONTRACTOR agrees to assign Bryan Kemper to this project, to act in the capacity of Project Manager and personally direct the professional services to be provided by CONTRACTOR.

Except as specified in this Agreement, CONTRACTOR shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise to perform all operations necessary and required to satisfactorily complete the services required in this Agreement.

2. Contract Term

The term of this Agreement shall be for two (2) years from the date of contract execution through, unless otherwise terminated.

3. Payment of Fees and Expenses

Payments shall be made to CONTRACTOR on a monthly basis as set forth in the attached Exhibit "B" entitled "Compensation Schedule." All compensation will be based on monthly billings as provided in Exhibit "B." Compensation will not be due until said detailed billing is submitted to CITY within a reasonable time before payment is expected to allow for normal CITY processing. An estimate of the percent of total completion associated with the various categories of the services shall be furnished by CONTRACTOR with said billing. When applicable, copies of pertinent financial records will be included with the submission of billing(s) for all direct reimbursables. Compensation shall not exceed the amounts set forth in Exhibit "B" for each phase. In no event shall the total amount of compensation payable under this agreement exceed the sum of One Hundred Sixty Five Thousand and No/100 Dollars (\$165,000.00) unless upon written modification of this Agreement. All invoices, including detailed backup, shall be sent to City of Sunnyvale, attention Accounts Payable, P.O. Box 3707, Sunnyvale, CA 94088-3707.

4. No Assignment of Agreement

CONTRACTOR bind themselves, their partners, successors, assigns, executors, and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of CITY. However, claims for money due to or to become due to CONTRACTOR from CITY under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to CITY. In case of the death of one or more members of CONTRACTOR's firm, the surviving member or members shall complete the services covered by this Agreement. Any such assignment shall not relieve CONTRACTOR from any liability under the terms of this Agreement.

5. Contractor is an Independent Contractor

CONTRACTOR is not an agent or employee of CITY but is an independent contractor with full rights to manage its employees subject to the requirements of the law. All persons employed by CONTRACTOR in connection with this Agreement will be employees of CONTRACTOR and not employees of CITY in any respect. CONTRACTOR is responsible for obtaining statutory Workers' Compensation coverage for its employees.

6. Standard of Workmanship

CONTRACTOR represents and maintains that it is skilled in the professional calling necessary to perform the services and its duties and obligations, expressed and implied, contained herein, and CITY expressly relies upon CONTRACTOR's representations regarding its skills and knowledge. CONTRACTOR shall perform such services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

7. Responsibility of CONTRACTOR

CONTRACTOR shall be responsible for the professional quality, technical accuracy and the coordination of the services furnished by it under this Agreement. Neither CITY's review, acceptance nor payment for any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement and CONTRACTOR shall be and remain liable to CITY in accordance with applicable law for all damages to CITY caused by CONTRACTOR's negligent performance of any of the services furnished under this Agreement.

8. Right of CITY to Inspect Records of CONTRACTOR

CITY, through its authorized employees, representatives, or agents, shall have the right, at any and all reasonable times, to audit the books and records including, but not limited to, invoices, vouchers, canceled checks, time cards of CONTRACTOR for the purpose of verifying any and all charges made by CONTRACTOR in connection with this Agreement. CONTRACTOR shall maintain for a minimum period of three (3) years from the date of final payment to CONTRACTOR or for any longer period required by law, sufficient books and records in accordance with generally accepted accounting practices to establish the correctness of all charges submitted to CITY by CONTRACTOR. Any expenses not so recorded shall be disallowed by CITY.

9. Confidentiality of Material

All ideas, memoranda, specifications, plans, calculations, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for CONTRACTOR and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall be held confidential by CONTRACTOR and shall not, without the prior written consent of CITY be used for any purposes other than the performance of the Project services, nor be disclosed to an entity not connected with the performance of the Project services. Nothing furnished to CONTRACTOR which is otherwise known to CONTRACTOR or is or becomes generally known to the related industry shall be deemed confidential. CONTRACTOR shall not use CITY's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of CITY.

10. No Pledging of CITY's Credit

Under no circumstances shall CONTRACTOR have the authority or power to pledge the credit of CITY or incur any obligation in the name of CITY.

11. Ownership of Material

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared, under this Agreement shall be the property of CITY, but CONTRACTOR may retain and use copies thereof.

CITY shall not be limited, in any way, in its use of said material, at any time, for work associated with Project. However, CONTRACTOR shall not be responsible for damages resulting from the use of said material for work other than Project, including, but not limited to the release of this material to third parties for work other than on Project.

12. Insurance Requirements

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "A" attached and incorporated by reference, and shall provide all certificates and/or endorsements as specified in Exhibit "A."

13. No Third Party Beneficiary

This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.

14. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Vincent Anderson, Civilian Fire Marshal
Department of Public Safety
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONTRACTOR: HetNet Wireless, LLC
Attn: Bryan Kemper, CEO
144 Continente Ave, Suite 220
Brentwood, CA 94513

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail, by commercial carrier, or hand-delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Waiver

CONTRACTOR agrees that waiver by CITY of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

16. Amendments

No alterations or changes to the terms of this Agreement shall be valid unless made in writing and signed by both parties.

11. Integrated Agreement

This Agreement embodies the agreement between CITY and CONTRACTOR and its terms and conditions. No verbal agreements or conversation with any officer, agent or employee of CITY prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon CITY.

18. Conflict of Interest

CONTRACTOR shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONTRACTOR is aware of the prohibition that no officer of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this

Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR'S obligations under this Agreement.

Pursuant to CITY'S Standard Conflict of Interest Code, Council Policy 7.3.7, and the Political Reform Act, CITY has determined that any individual performing services under this Agreement may be required to file a Statement of Economic Interest (Form 700), Disclosure Category 1. See www.fppc.ca.gov for Form 700.

19. California Agreement

This Agreement has been entered into in the State of California and this Agreement shall be governed by California law.

20. Records, Reports and Documentation

CONTRACTOR shall maintain complete and accurate records of its operation, including any and all additional records required by CITY in writing. CONTRACTOR shall submit to CITY any and all reports concerning its performance under this Agreement that may be requested by CITY in writing. CONTRACTOR agrees to assist CITY in meeting CITY's reporting requirements to the state and other agencies with respect to CONTRACTOR's work hereunder. All records, reports and documentation relating to the work performed under this Agreement shall be made available to City during the term of this Agreement.

21. Termination of Agreement

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of satisfactory services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within (30) days after written notification of failure to pay.

22. Subcontracting

None of the services covered by this Agreement shall be subcontracted without the prior written consent of CITY. Such consent may be issued with notice to proceed if subcontract CONTRACTORS are listed in the project work plan.

23. Fair Employment

CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, condition of physical handicap, religion, ethnic background or marital status, in violation of state or federal law.

24. Changes

CITY or CONTRACTOR may, from time to time, request changes in the terms and conditions of this Agreement. Such changes, which are mutually agreed upon by CITY and CONTRACTOR, shall be incorporated in amendments to this Agreement.

25. Other Agreements

This Agreement shall not prevent either Party from entering into similar agreements with others.

26. Severability Clause

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

27. Captions

The captions of the various sections, paragraphs and subparagraphs, of the contract are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.

28. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

29. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

HetNet Wireless, LLC ("CONTRACTOR")

By _____

APPROVED AS TO FORM:

Name/Title

City Attorney

By _____

Name/Title

Exhibit A
Scope of Services

1. Plan Check and Review

The proposer will define a proposed methodology in performing plan check and review and will identify the schedule for completing typical review and reporting activities. The City standard for review of initial plan submittal is 21 days and for review of resubmittals is 14 days. The proposer will note that the contractor is responsible for the design, performance and operation of the Signal Booster System. The proposer will also note that the Fire Marshal's Office has the authority to approve plans and will utilize the special inspection to assist with making these determinations.

The tasks required for each Special Inspection will vary between buildings and may include a combination of the following primary activities:

1. The measurement and documentation of indoor signal levels.
2. A technical review of Contractor submitted plans, specifications and system design documentation.
3. Validating the operation of new Signal Booster Systems.
4. On-Site Acceptance and Annual Testing of radio coverage
5. On-Line reporting and distribution of Acceptance Forms and Test Records.

2. Test Process and Reports

The Proposer will define their test process for measuring and documenting indoor radio coverage. The test process must be aligned with Fire Code, NFPA 1221 and NFPA 72 requirements. Reports must include screen captures or plots to document the signal levels or shall be generated directly by the measurement equipment. At a minimum, the formal reports are required for Benchmark Tests to document the native coverage of each building and for Acceptance Tests to document the improved coverage after a signal booster system is installed. Measurements must be made in a minimum of 20 locations on each floor to demonstrate the coverage in the general floor area and in critical locations such as stairways, exits, elevator lobbies, electrical rooms and fire control rooms. The Test Reports must:

1. Identify the Building Address and Donor Radio Site.
2. Include a link budget.
3. Include a picture of the building and a map.
4. Include exterior signal level measurements.
5. Present the measurement data documenting the signal level in a minimum of 20 grid cells and in the Critical locations. The measurement may be made while walking a pattern in the grid cell or from a single location within each grid cell. The report will document the signal levels recorded during a Proposer specified time interval and will identify the peak value for each measurement.
6. Include the building loss and Uplink Signal levels for each measurement location.
7. Include floor plans identifying the measurement locations.

Acceptance Test Reports are required for each new system that is installed and on an annual basis. Each new system shall also be inspected to ensure interference-free

operation of the amplifier as well as operation of the alarms interfaced to the Fire Alarm Panel and performance of the back-up power system.

The City of Sunnyvale prefers that reports be provided electronically and distributed via email. The Proposer shall identify the proposed method of providing archive and long-term access to the test reports. A sample report shall be included with the proposal.

3. Special Inspection, Consulting, Management and Engineering Services

Special inspections, consulting, management and engineering services may be necessary on an as needed basis.

The selected service provider will also assist the City of Sunnyvale on an as-needed basis by providing consulting, management and engineering services. The as-needed services may be requested by the City when considered necessary for the effective planning and enforcement of Indoor Radio Coverage or to mitigate interference to the Public Safety Radio System. The Proposer will describe their capability and experience with Signal Booster Systems, Fire Code requirements and Public Safety Radio Systems.

Exhibit B
Fee Schedule

Plan Check and Review

Cost per Building	\$500
Cost to Review Corrections	\$250

Testing and Report

Equipment Validation	\$500
Coverage Validation per floor	\$250

**Special Inspection, Consulting,
Management and Engineering
Services**

Special Inspections	\$150 per hour
Consulting, Management and Engineering Services	\$150 per hour

Exhibit C INSURANCE REQUIREMENTS FOR CONSULTANTS

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance. Consultant shall maintain limits no less than:

1. **Commercial General Liability:** \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required.
3. **Workers' Compensation** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☒ Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of \$2,000,000 per occurrence.
- ☐ If working directly with children, the Certificate of Insurance must include coverage for molestation and sexual abuse in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five year extended reporting clause.
- ☐ Pollution Liability Insurance in the minimum amount of \$1,000,000 per occurrence
- ☐ MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants
- ☐ Builder's Risk / Course of Construction Insurance in the minimum amount of \$_____.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and automobile liability policies (and if applicable, pollution liability, sexual abuse and molestation, and builder's risk policies) shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant'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.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

Subcontractors

CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to these requirements. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.