



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
May 19, 2010**

**TO:** Mayor and City Council  
**FROM:** Michael Chandler, Senior Management Analyst  
**SUBJECT:** Wi-Fi Agreement  
**DATE:** May 13, 2010

**RECOMMENDATION:**

Adopt a resolution authorizing the City Manager to sign an Agreement for Public Digital Initiative (Wi-Fi) with AirCloud Communications.

**BACKGROUND**

The City of Martinez wishes to enable Wi-Fi services in its downtown area as a benefit for its customers, businesses, residents, and visitors through a qualified third-party vendor, AirCloud Communications (“AirCloud”). The City of Pleasant Hill has been using AirCloud to manage its Wi-Fi network since 2007 and has expressed satisfaction with their services. Additional areas on the same Wi-Fi network include multiple locations in Concord and access points in Clayton and Brentwood.

Under this Agreement, the City will fund the purchase and installation of wireless radio equipment at several locations throughout downtown Martinez, including various streetlights along Main Street; on top of the County Administration Building; at the Amtrak facility; and at City Hall and the adjacent Plaza and Park as Phase I of the project. If the initial phase is successful, the Agreement allows for an optional Phase II at the City’s sole discretion, which will expand Wi-Fi access to other areas in the downtown as well as the marina complex. In the event the City elects to proceed with Phase II, staff will provide Council with an update of the downtown Wi-Fi project and a request for additional funding at that time. The term of the Agreement will be for 15 years.

The Wi-Fi services will include a free service option with banner advertisements from local and regional businesses incorporated into the browser, and a paid access option that will operate at faster speeds and not include the advertisements. Businesses wishing to participate in the Wi-Fi advertising will be able to select from a variety of packages based on number of “impressions” (meaning actual viewings by a Wi-Fi user) per month. Advertisements from Martinez businesses will be seen by users throughout the network in other cities, presenting a potentially significant marketing opportunity for local merchants. The Chamber of Commerce and Main Street Martinez will help promote the various advertising options. The City will receive a 10% share in the net revenues generated from the advertisements and the for-pay subscriptions.

As part of the Agreement, the City of Martinez will receive 5,000 free impressions per month on the free service tier. The City will use these spots to advertise the City's website; web-streaming of City Council meetings; and upcoming special events. The Chamber of Commerce and Main Street Martinez will also receive 5,000 free impressions each per month, to promote their various events, programs, and memberships.

**FISCAL IMPACT:**

City funding for the Wi-Fi network will include equipment procurement and installation as outlined in Exhibit B. City funding for Phase I will be a not-to-exceed amount of \$18,000. The resolution authorizes these funds from Public-Educational-Government (PEG) account number 3600406-5300 for this project. All revenues received as part of the City's 10% net share will be returned to the PEG account.

**ACTION:**

Motion to adopt a resolution authorizing the City Manager to sign an Agreement for Public Digital Initiative with AirCloud Communications.

Attachments:

Resolution

Agreement (includes Exhibit A: Scope of Services)

Exhibit B: Proposal for City of Martinez Downtown Wi-Fi Network

**APPROVED BY:**



City Manager

RESOLUTION NO. -10

**AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PUBLIC DIGITAL INITIATIVE (WI-FI) WITH AIRCLOUD COMMUNICATIONS**

**WHEREAS,** the City wishes to enable Wi-Fi services in its downtown area through a qualified third-party vendor as a benefit for its customers, businesses, residents, and visitors; and

**WHEREAS,** AirCloud Communications (hereafter "AirCloud") currently operates a wireless Internet (Wi-Fi) network for the City of Pleasant Hill, and parts of other nearby communities; and

**WHEREAS,** the City has considered the qualifications of AirCloud to install, manage and operate the Wi-Fi network in downtown Martinez and found AirCloud to be specially trained, experienced, and competent to perform the special services required by the attached Agreement for Public Digital Initiative (Wi-Fi) (hereafter "Agreement") and its associated Exhibits A and B; and

**WHEREAS,** as part of said Agreement, the City agrees to fund the cost of purchasing and installing the equipment necessary to implement the Wi-Fi network in downtown Martinez; and

**WHEREAS,** the City will receive 10% share in net revenues generated by the advertising and paid access on the system in Martinez; and

**WHEREAS,** the City will receive 5,000 free advertising "impressions" per month to advertise the City's website, web-streaming of City Council meetings, and upcoming special events, among others; and

**WHEREAS,** the City's funding for the network will be in an amount not to exceed \$18,000 from the Public-Educational-Government (PEG) funds account, which covers an initial Phase I of deployment; and

**WHEREAS,** any revenues received as part of the City's 10% share in net revenues generated by the advertising and paid access on the system in Martinez will be returned to the PEG funds account.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Martinez hereby authorizes the City Manager to execute the Agreement for Public Digital Initiative (Wi-Fi) between the City of Martinez and AirCloud Communications.

**BE IT FURTHER RESOLVED** that the City Council authorizes funding in an amount of \$18,000 from the special revenue PEG funds account 3600406-5300; and

**BE IT FURTHER RESOLVED** that all revenues received as part of the City's 10% share in net revenues will be returned to the special revenue PEG funds account 3600406-5300.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 19<sup>th</sup> day of May, 2010, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK  
CITY OF MARTINEZ

## AGREEMENT FOR PUBLIC DIGITAL INITIATIVE (WI-FI)

This Agreement is made and entered into as of the \_\_\_ day of May, 2010, by and between the City of Martinez ("City") and AirCloud Communications ("Supplier").

### RECITALS

- A. City wishes to enable Wi-Fi services in its downtown area as a benefit for its customers, businesses, residents, and visitors through a qualified third-party vendor; and
- B. Supplier agrees to provide, manage, maintain, and support a Wi-Fi system allowing free ad-supported, and paid ad-free public access to the Internet; and
- C. Supplier currently manages the Pleasant Hill Wi-Fi network and is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and
- D. Supplier possesses the skill, experience, ability, background, certification and knowledge to provide services described in this Agreement on the terms and conditions described herein.

### AGREEMENT

1. Scope of Agreement. The Supplier shall supply the equipment and perform the services described in Exhibit A "Scope of Services" and Exhibit B "Proposal for City of Martinez Downtown Wi-Fi Network" attached hereto and incorporated herein by reference ("Project"). Supplier shall provide said services at the time, place, and in the manner specified in Exhibit A.
2. Responsibilities of City. The Project Coordinator, or her/his assignee ("City Representative") shall represent the City in all matters pertaining to the services rendered pursuant to this Agreement and shall administer the Agreement on behalf of the City. This person shall hereinafter be referred to as the "City Representative." City shall fund the upfront equipment and installation costs as specified in Exhibit B.
3. Term. The term of this agreement is 15 years.
4. Ownership of Documents. All plans, studies, documents and other writings delivered to the City by Supplier in the course of implementing this

Agreement, except working notes and internal documents, shall become the property of the City. Documentation will be provided by the Supplier to the City in Microsoft Word format. Diagrams will be provided by Supplier to the City in Visio Format. Supplier shall, at Supplier's expense, provide such reports, plans, studies, documents and other writings to City upon written request.

5. Project Manager. A Project Manager shall be named by Supplier in Exhibit B. The City reserves the right to request that the Supplier dismiss and assign another Project Manager if timelines/deadlines as set forth in Exhibit A and Exhibit B are missed due to no fault of the City or other City approved Contractors.

6. Operational Performance Testing. Operational performance testing is defined as 30 consecutive days of “non-fatal” application failures from when training is completed and the City starts using the network in a production environment.

A. Problems.

- 1) During operational performance testing (OPT), the City shall make a written record of any problems encountered, with appropriate supporting descriptions to facilitate diagnosis and correction. If no problems are encountered within the OPT for a 30 consecutive day period, the City shall immediately certify that the system has passed the operational testing phase and the network modules are deemed to be accepted.
- 2) If any problems are encountered, Supplier shall provide to the City a written statement that the problems shall be corrected by a stated date acceptable to the City. Once corrected to the City's satisfaction, the City shall certify that the system has passed the operational testing phase and shall communicate the results of its verification to Supplier.

B. Final Acceptance. Final Acceptance of installation shall be upon the occurrence of all the following:

- 1) Delivery to the City of all professional services required to meet the City's implementation requirements described in Exhibit A.
- 2) Demonstration of successful operation of the Project through operational performance testing.

- 3) Issuance of a Certificate of Compliance for all installed items by Supplier.
- 4) A final testing of the system including a functional test demonstrating that each and every part of the system functions as specified.
- 5) When the tasks outlined in Exhibit A and Exhibit B are complete and signed off by both parties, the City Representative shall visually verify that Supplier completed all work in an acceptable manner. The City Representative shall prepare a “punch list” of any items that need to be completed, corrected, or redone for the Project to pass inspection. When notified by Supplier that all punch list items have been completed, the City Representative can schedule the final inspection. At the final inspection, the City Representative shall visually verify that Supplier has acceptably completed all required work.
- 6) Upon acceptance of the Project completion by the City Representative, a written notification of final acceptance shall be sent to Supplier.

7. Independent Contractor. It is understood that Supplier, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Supplier shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Supplier hereby expressly waives any claim it may have to any such rights.

8. Interest of Supplier. Supplier (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Supplier's services hereunder. Supplier further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Supplier is not a designated employee within the meaning of the Political Reform Act because Supplier:

- a. Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel

independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. Possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel.

9. Professional Ability of Supplier. City has relied upon the professional training and ability of Supplier to perform the services hereunder as a material inducement to enter into this Agreement. The primary provider of the services called for by this Agreement shall be Advance Voice and Data (AVD). This provider shall not be replaced without the written consent of the City. All work performed by Supplier under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Supplier's field of expertise.

10. Indemnity. Supplier agrees to defend, indemnify and hold harmless the City, its officers, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein), arising out of the performance of this Agreement, except for any such claim arising out of the sole active negligence or willful misconduct of the City, its officers, agents, employees or volunteers.

11. Patent and Copyright Warranty and Indemnity. Supplier hereby warrants that its software, hardware and associated systems or products do not violate or infringe upon any patent, trademark, copyright, service mark, trade secret, mask work or other intellectual property right or proprietary right of any third party. Supplier agrees to defend, at its expense, any suits against the City based upon a claim that any of its software, hardware, or other products provided pursuant to the terms hereof infringes a patent or copyright and to indemnify City and pay any and all costs and damages finally awarded in any such suit, provided that Supplier is notified promptly in writing of the suit and, at Supplier's request and at its expense, is given all requested assistance for defense of the suit at Supplier's expense. This indemnity does not extend to any suit based upon any infringement or alleged infringement of copyright by the software or hardware and other elements added by the City nor does it extend to any product(s) of City's design or formula. The foregoing states the entire liability of Supplier for patent or copyright infringement related to the Supplier software or hardware or associated systems.

12. Warranty Disclaimer. Supplier represents and warrants that Supplier shall, on the date of transfer to the City, have title to and the right to sell the

software, hardware and associated systems or products to the City. Any warranty issued by the manufacturer of products shall be solely that of the manufacturer and not of Supplier. Supplier hereby assigns to City, as of the date that title passes to City for such product, all of the manufacturer's or vendor's warranties, express or implied, if any and if assignable, with respect to the software, hardware and associated systems or products. Supplier hereby authorizes City to make or settle any claims under such warranties directly with any such manufacturer or vendor. EXCEPT FOR THIS EXPRESS WARRANTY, SUPPLIER DISCLAIMS ALL WARRANTIES ON PRODUCTS (INCLUDING SOFTWARE), EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF SUPPLIER ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE PRODUCT. THE FOREGOING WARRANTIES EXTEND ONLY TO THE CITY OF MARTINEZ AND SHALL NOT BE ASSIGNABLE TO ANY OTHER PARTY.

13. Limitation of Liability. Supplier is not liable, for alleged defects in products sold or services performed, to third parties or anyone with whom it does not have a direct contractual relationship. Supplier is not liable for defects in information provided by secondary sources. All documents, including reports, drawings, plans, designs and specifications, prepared by Supplier or its subcontractors are not intended or represented by Supplier to be suitable for use by or relied upon by anyone but the City or for uses beyond the scope of the specific uses or purposes set forth in the contract documents. INDEPENDENTLY OF ANY OTHER REMEDY LIMITATION HEREOF AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY SUCH LIMITED REMEDY, IN NO EVENT SHALL SUPPLIER BE LIABLE FOR SPECIAL, INCIDENTAL, COST OF COVER, LOST PROFITS OR CONSEQUENTIAL DAMAGES OF ANY KIND WHETHER UNDER CONTRACT, TORT OR OTHER LEGAL ACTION UNDER THIS AGREEMENT, EVEN IF SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Nondisclosure. City acknowledges that, in the course of using the software, hardware and associated systems or products contemplated by this Agreement, City may obtain confidential or proprietary information relating to the technology or the accompanying documentation of Supplier or its subcontractors, including without limitation all technical know-how and specifications ("Proprietary Information"). For purposes of this Agreement, Proprietary Information further includes any information and data which is, or should be reasonably understood to be, confidential or proprietary to the

disclosing party, which may include, without limitation, proprietary technical, financial, personnel, marketing, pricing, sales and/or commercial information with respect to the products and services of the parties, as well as ideas, concepts, designs, computer programs and inventions and all record bearing media containing or disclosing such Proprietary Information which are disclosed pursuant to this Agreement. Such Proprietary Information shall belong solely to Supplier. Proprietary Information shall not include information that is or becomes publicly known through no wrongful act of City. Except as otherwise required by law, including but not limited to the California Public Records Act (CPRA), City shall not use or disclose Proprietary Information to third parties without the prior written consent of Supplier, and City agrees to undertake reasonable measures to maintain the Proprietary Information in confidence. City agrees to report immediately to Supplier any unauthorized use or disclosure of Proprietary Information of which City has actual knowledge.

Supplier acknowledges that, in the course of installing, supporting and maintaining the software, hardware and associated systems or products for the City, Supplier may obtain information regarding the City or its associated computer systems. Notwithstanding that certain parts of such data may become a public record, Supplier shall not disclose or use any such potentially confidential information without the City's prior written consent. Supplier agrees to take all appropriate steps to protect the integrity and confidentiality of the City's computer systems.

Each party shall protect and safeguard the Proprietary Information of the other party using at least the same degree of care such party uses to protect its own Proprietary Information of like importance.

15. Insurance Requirements.

a. Supplier, at Supplier's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.

i. Workers' Compensation Coverage. Supplier shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Supplier shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received

by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Supplier for City.

ii. General Liability Coverage. Supplier shall maintain commercial general liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Supplier shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Supplier arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Martinez, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insured with respect to liability arising out of work performed by or on behalf of the Supplier, including materials, parts or equipment, products and completed operations furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each,

except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Supplier shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Supplier shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

16. Compliance with Laws. Supplier shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.

17. Licenses. Supplier represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Supplier to practice its profession. Supplier represents and warrants to City that Supplier shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Supplier to practice its profession. Supplier shall maintain a City of Martinez business license.

18. Encroachment Permit. The Supplier, and/or its subcontractor(s), shall obtain all applicable Encroachment Permits for work related to the installation of the Wi-Fi network equipment in downtown Martinez.



records shall be available at Supplier's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Supplier's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Supplier, Supplier's representatives, or Supplier's successor-in-interest.

22. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Supplier. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

23. Amendments. This Agreement may be modified or amended only by a written document executed by both Supplier and City and approved as to form by the City Attorney.

24. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.

25. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

26. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

27. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Supplier. Assignments of any or all rights, duties or obligations of this Supplier under this Agreement will be permitted if the Assignee has like and kind professional reputation, experience and competence and only with the express consent of the City. Supplier shall be fully responsible to City for all

acts or omissions of its subcontractors. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

28. No Confidentiality. This agreement is a public record and will be available to the public if requested.

29. No Interference. Supplier will resolve technical interference problems with other equipment, City-owned or otherwise, as of the effective date of this Agreement. Supplier will also resolve any future technical interference problems caused by current or future equipment associated with the operation of the Wi-Fi system within the laws of the FCC. In the event interference is not resolved to the City's satisfaction, the City may terminate subject to the conditions of Section 30 below.

30. Termination Provisions. In the event that any of the material provisions of the contract are violated by the Supplier or by any of its subcontractors, or if the system's performance is unsatisfactory to the City by not meeting the standards as set forth in Section 29 above or as expressed in Exhibit A, the City of Martinez may, at its discretion, serve written notice to the Supplier of its intention to terminate the contract. Such notice will contain the reason for termination. The Supplier will then have 30 calendar days to either correct the violation or to make arrangements for correction to be made to meet the satisfaction of the City of Martinez. If no arrangement is reached within the 30-day period, the contract will be declared terminated. In the event the Supplier goes out of business, file for bankruptcy or ceases to provide free internet services to the public, the Supplier will turn over all documentation and passwords to the City of Martinez.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF MARTINEZ:

SUPPLIER:

\_\_\_\_\_  
Philip Vince  
City Manager

By: \_\_\_\_\_

Business License # \_\_\_\_\_

APPROVED AS TO FORM:

---

City Attorney

ATTEST:

---

City Clerk

Exhibit A: Scope of Services

Exhibit B: AirCloud Communications Proposal

## EXHIBIT A

### SCOPE OF SERVICES

1. AirCloud Communications (hereafter “AirCloud”) will provide and direct the installation of the necessary equipment, and assume maintenance and replacement responsibilities with respect to the equipment, for the operation of a downtown Wi-Fi system. The City will fund the procurement and installation costs, assist with the equipment installations, and maintain ownership, of certain pieces of equipment as listed in Exhibit B, and will be identified as the owner of any equipment that replaces existing equipment at the locations specified therein. City and AirCloud endeavor to implement additional locations in the downtown area suitable for expanding the Wi-Fi system in a manner consistent with the equipment and installations contemplated in this Agreement, in a series of phases as specified in Exhibit B; however, the City in its sole discretion has the option of approving or denying implementation of any phases beyond Phase I of the project.
  
2. Use Fee – In consideration of the privilege of managing the Wi-Fi system in the City’s public rights of way, Supplier shall pay to the City a use fee of 10% of the net revenues generated through Supplier’s advertising sales and paid access, beginning one year after the effective date of this Agreement. The use fee shall be payable within 30 days of the expiration of each of the Supplier’s fiscal quarters. Each payment shall be accompanied by a report in such form as the City may reasonably request showing the computation of the use fee for the preceding quarter. For purposes of this fee, “net revenues” means all revenues of the Wi-Fi system derived directly or indirectly by Supplier from the operation of the wireless Wi-Fi system within the City, excluding any portion of revenues paid by Supplier to a third party for the marketing, administration and maintenance of the customer billing and advertising component. Net revenues generated within the City of Martinez shall include, without limitation, the following: (i) fees charged to subscribers wireless service; (ii) installation, disconnection, reconnection and change-in-service fees; (iii) use or license fees; (iv) late fees; (v) administrative fees, including FCC regulatory fees; (vi) charges for the rental or sales of converters and other equipment to subscribers; (vii) advertising revenues, (excluding commissions paid to or retained by advertising agencies)

Gross revenues do not include (i) actual bad debt, provided, however, that all or a part of any actual bad debt that is written off but subsequently collected shall be included in gross revenues in the period collected; (ii) the value of free services; (iii) any taxes on services furnished by the Supplier

which are imposed directly on any subscriber by the State of California, the City, or other governmental unit, and which are collected by the Supplier on behalf of said governmental unit

3. City has entered into a separate agreement with PG&E, on behalf of AirCloud Communications, to enable AirCloud's access to the unmetered conduit in City-owned streetlights as a dedicated power source for AirCloud's Wi-Fi equipment. AirCloud will be directly responsible for any and all costs incurred by PG&E pertaining to service interruptions or other problems on the unmetered conduit caused by AirCloud's Wi-Fi equipment.
4. Network is to be completed and operational within 3 months of signing of agreement.
5. AirCloud Communications will provide the following services:

#### **Service Plans**

- **Free Internet Access** – up to 1Mbps x 128kbps – NAT IP Address – Framed Browser – service limited to http, https, chat
- **Paid Internet Access** – up to 3.0Mbps x 512kbps – NAT IP address – no advertisements – service expanded to include most protocols
  - i. 1 hour - \$2.00
  - ii. 4 hours - \$3.00
  - iii. 24 hours - \$5.00
  - iv. 30 days - \$15.00
- **Advertising**
  - i. 5000 impressions - \$50.00 per month
  - ii. 10,000 impressions – \$150.00 per month
  - iii. 20,000 impressions - \$200.00 per month

airCloud Net is 75% of above service rates.

- **Note** – Paid service plans may change in light of competition with other ISP's operating within the City of Martinez, CA.

**Indoor Access** – If additional equipment is needed for indoor use, AirCloud will provide credible equipment at competitive market prices.

**High levels of reliability.** Deliver 99.7% network uptime within the coverage area.

**Interference resilient.** Offers protection against local environmental disrupters and resiliency for interference.

**Standard IEEE 802.11 (Wi-Fi) compliant.** Interoperate with standard IEEE approved and supported Wi-Fi (802.11x) networking devices.

**City Usage** - System will be available for use by City personnel at no cost. City will have rights to promote its City website [www.cityofmartinez.org](http://www.cityofmartinez.org) and City-sponsored programs at a frequency of 5,000 impressions per month on the framed browser (the Free Internet Access service tier), at no cost. Additionally, the Chamber of Commerce and Main Street Martinez shall each receive 5,000 impressions per month on the framed browser to promote their programs and events, also at no cost.

**Public Access monitored** - When State or Federal law mandates.

**Future Access** – During the term of the agreement, AirCloud will work with the City of Martinez in analyzing the feasibility and deployment of adding additional services via the Wi-Fi Network.

6. The City of Martinez recognizes the ever changing technology of Wi-Fi and Wi-Fi services to the Public. When technology changes for Internet Wireless for public reach, the equipment may need to change accordingly to meet these needs. The City of Martinez will negotiate at that time to change out equipment with above terms remaining the same. This applies to equipment other than 802.11x. Modification of the equipment or purchase of any additional equipment shall be in the sole discretion of the City of Martinez.

## Proposal for City of Martinez Downtown WiFi Network

Proposal  
Martinez WiFi Rev4

04/30/2010

### Proposed Network Description:

airCloud Communications proposes to design, engineer, and maintain a public access and public safety WiFi network for the City of Martinez. The City shall own and install the WiFi network infrastructure (as per attached Drawings 2-4 and Scope of Work) under the direction of an airCloud Project Engineer. airCloud shall provide all design, engineering, billing, ad sales, and Internet connectivity.

The City of Martinez shall purchase from airCloud the following:

- 1ea single AP/Bridge for backhaul of street-level Access Points at Country Admin Building (*subject to County authorization and approval*). Alternate location is Amtrak station mezzanine walkway cover if required.
- 8ea airCloud dual radio wireless access point/bridge to provide client access

The network shall be installed in two phases. Phase I shall be initial deployment and Phase II shall be at the City's option to expand coverage.

### Phase I installed node locations:

- Main at Castro (City owned streetlight)
- 635 Main - pole with no parking sign (City owned streetlight)
- Main at Ferry - pole with stop sign (City owned streetlight)
- Main at Las Juntas - pole with stop sign (City owned streetlight)
- Main @ Court - pole with No U Turn sign (City owned streetlight)
- City Hall (Chamber and conference rooms)
- City Hall Plaza and Park
- AmTrak Station (mezzanine walkway cover)

airCloud shall provide the following:

- 4Mbps/3Mbps Internet connectivity for Public WiFi
- AAA, Advertisement Delivery, and User Management
- Portal for business to purchase advertising
- System design, engineering, configuration, and maintenance
- Management of Licensed Electrician for electrical work
- Management and supervision of network installation by City workers



3478 Buskirk Ave.  
Pleasant Hill, CA 94523



**User Experience**

Public WiFi users shall be presented with two options upon connecting to the public WiFi:

- Free WiFi access supported by advertising. Free service shall allow basic connectivity to webmail, chat, and websites. POP, SNMP, VPN, FTP, and most other services shall be blocked. Speed shall be limited to 1Mbps x 128kbps.
- Paid WiFi access @ \$2/1hr, \$3/4hrs, \$5/24hrs, \$15/month. Paid service shall allow all services except open mail relays. Speed shall be limited to 2Mbps x 500kbps.

**Advertising**

Local businesses shall have the opportunity to purchase advertisement space. Advertisements shall be displayed to every free and paid user upon connecting to the WiFi network as well as every page on every free WiFi user's browser across the entire airCloud WiFi network.

**Public Safety**

The WiFi network shall support multiple SSID/VLAN sets allowing the network to be used for City and County services as needed. Distribution of VLAN traffic shall be the responsibility of the City or County office. City and/or County VLAN traffic shall have no Internet connectivity unless provided by the City or county offices. See Drawing 1

**Terms:**

Project is fixed-cost at **\$13,694.84** for airCloud equipment and labor. Payment is due in advance. Electrical work is **\$4,283.00**. Contract shall invoice the City directly.

airCloud shall pay City 10% sharing of NET revenues generated through advertising sales and paid access as determined in Contract Exhibit A.

Fixed cost includes equipment, configuration, project management, installation oversight, and commissioning.

- 1 year manufacturer warranty on radios
- 2 year manufacturer warranty on antennas

Ongoing maintenance and support costs

- Out of warranty network maintenance @ 90.00/hr
- Engineering and Support of additional services such as VLAN or other applications @ 90.00/hr

Electrical work shall be performed by Licensed Contractor. Mechanical work in public right-of-way shall be performed by City Workers under supervision of airCloud project engineer.

Thank you for the opportunity to make this proposal.

Jerry Richardson  
Project Manager/VP Operations

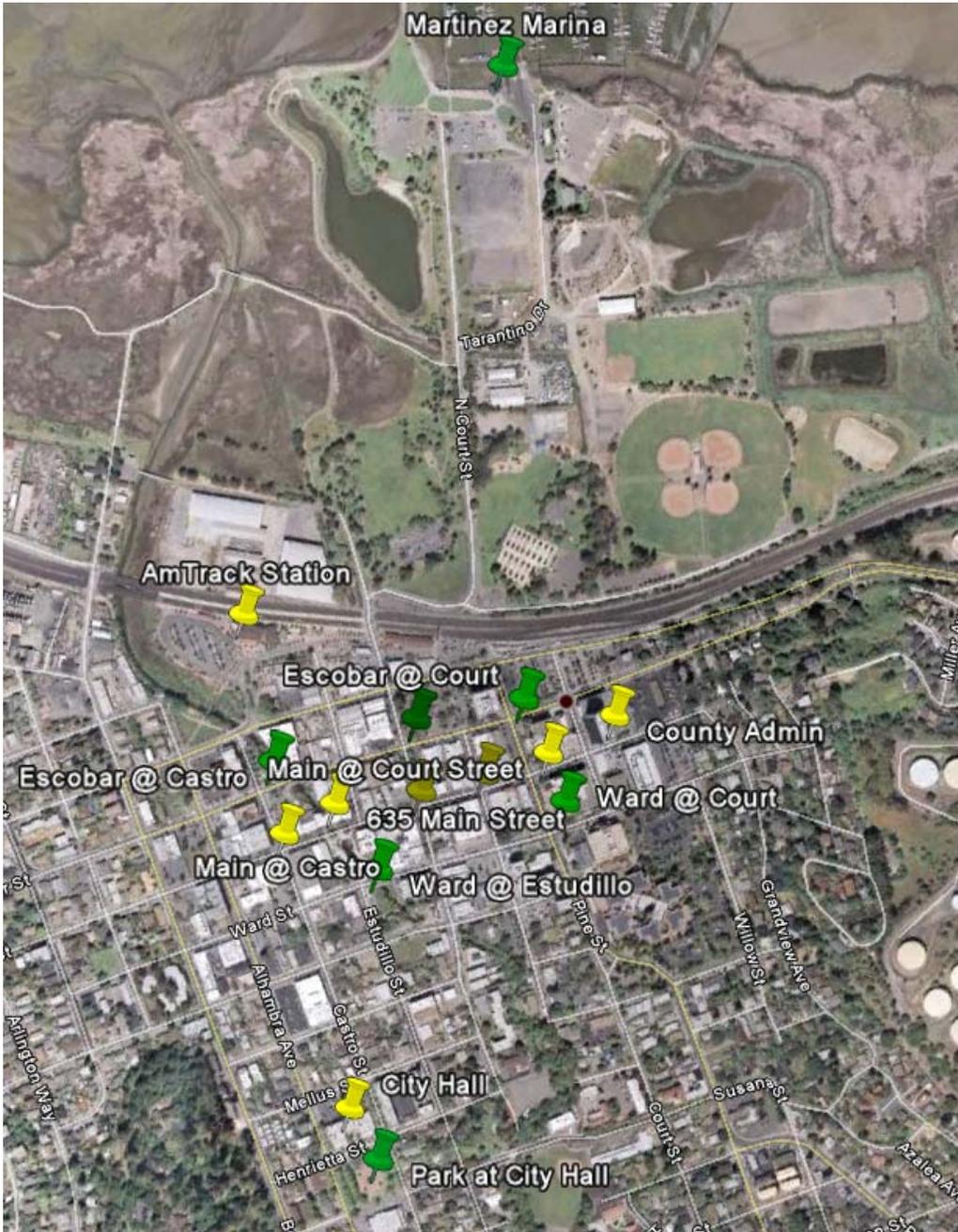
Proposal valid until 06/01/2010

**Proposal**  
**Martinez WiFi Rev4**  
**04/30/2010**



3478 Buskirk Ave.  
Pleasant Hill, CA 94523

**Image 1 – Node Locations**



Proposal  
Martinez WiFi Rev4  
04/30/2010



3478 Buskirk Ave.  
Pleasant Hill, CA 94523

**Image 2 – Typical Installation**



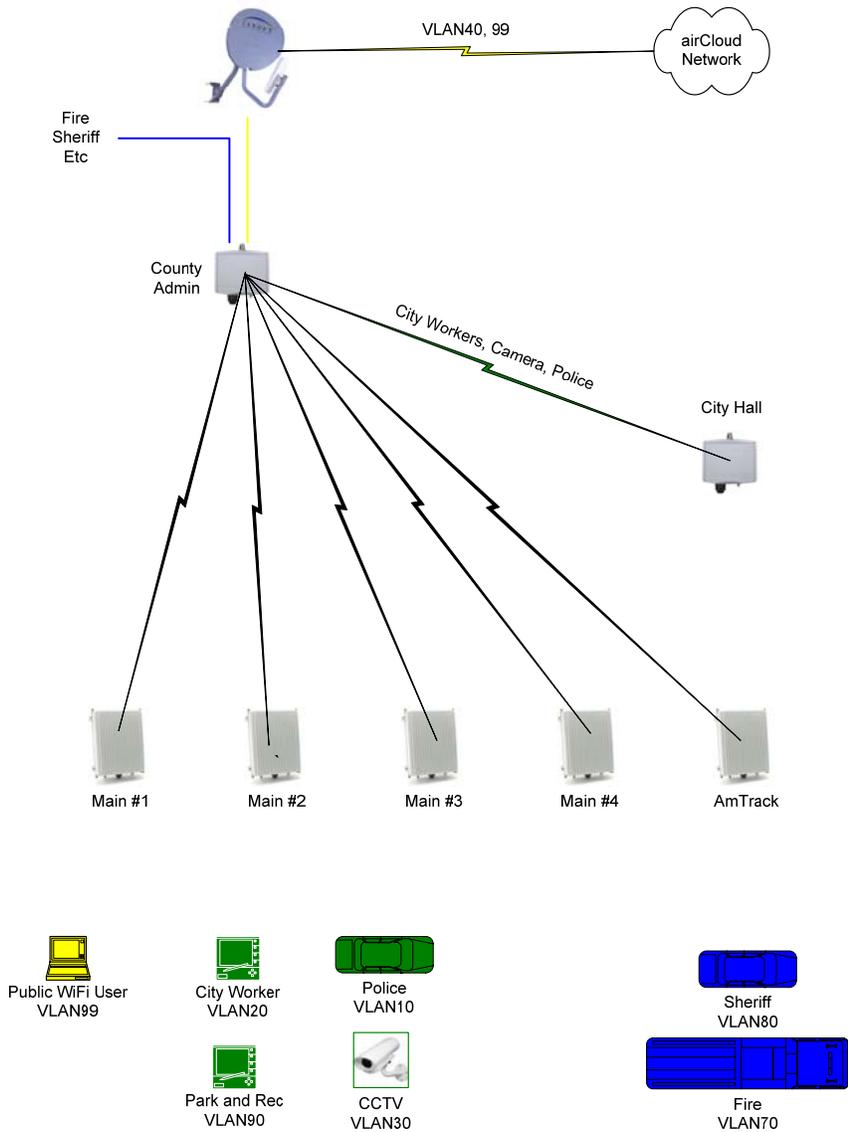
← 14”h x 1” diameter omni antenna

← 13x13 Integrated antenna and enclosure



Enclosure shall be mounted on opposite side of pole from signs to minimize visibility.

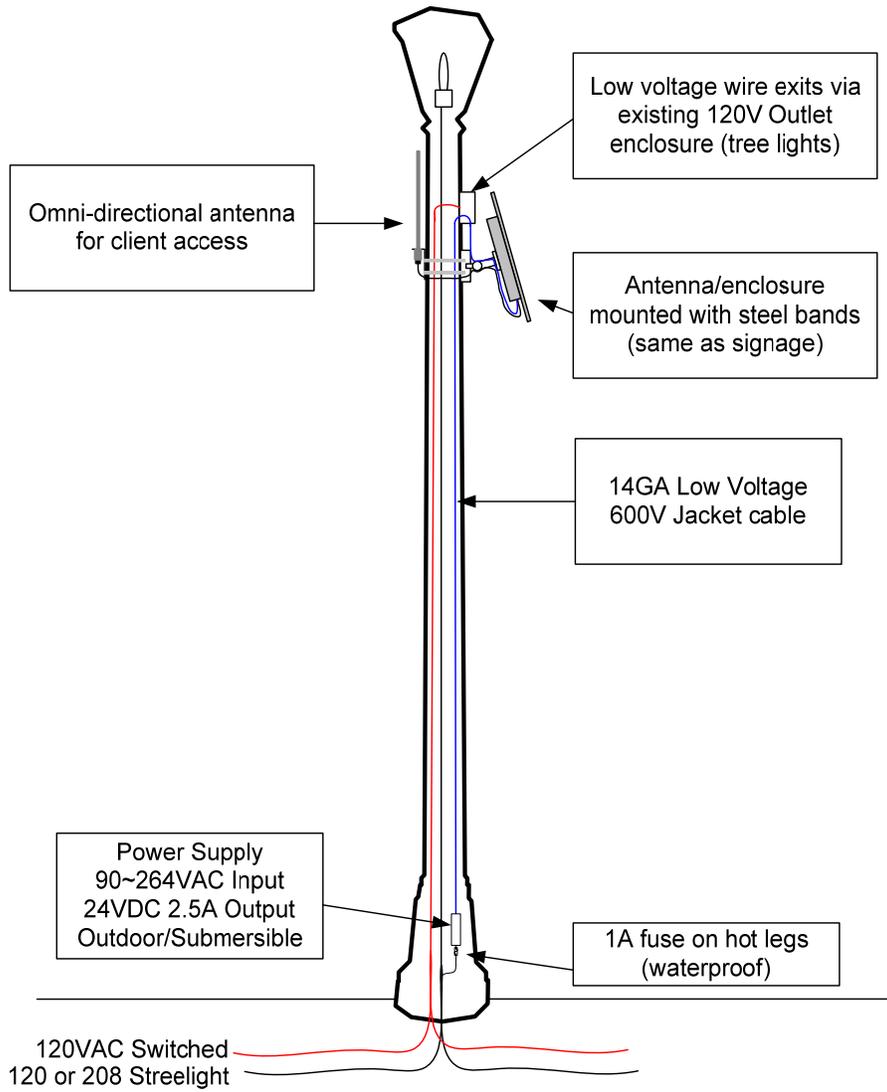
**Drawing 1 – Basic Network Topology**



<u>SSID</u>	<u>VLAN</u>	<u>Description</u>
aircloud-free-wifi	VLAN99	Public WiFi Access (free and paid)
PD	VLAN10	Police Dept
CITY	VLAN20	City Workers
VIDEO	VLAN30	CCTV Video Cameras
aircloudnet	VLAN40	airCloud Network Management
COUNTY	VLAN50	Contra Costa Country Sheriff
NOT USED	VLAN60	In PH – used for CONCORD PD
FIRE	VLAN70	County Fire and Rescue
PD2	VLAN80	Optional 2 <sup>nd</sup> PD VLAN
PARK_REC	VLAN90	Parks and Recreation Dept



**Drawing 2 – Light Pole Installation**

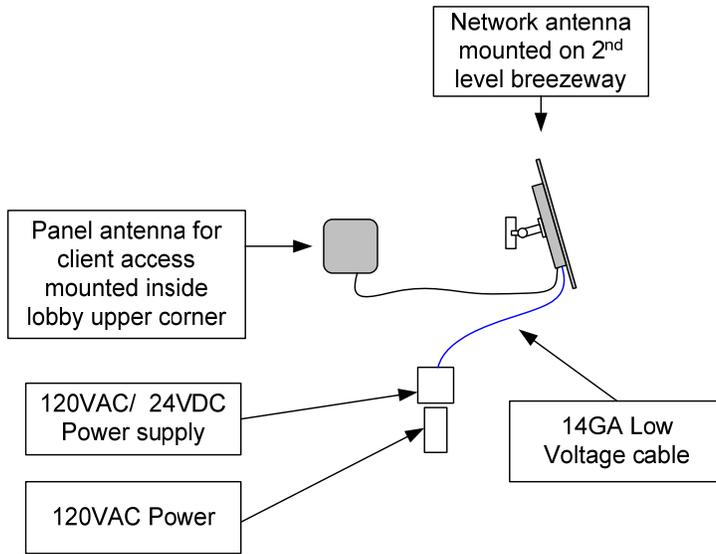


Proposal  
Martinez WiFi Rev4  
04/30/2010

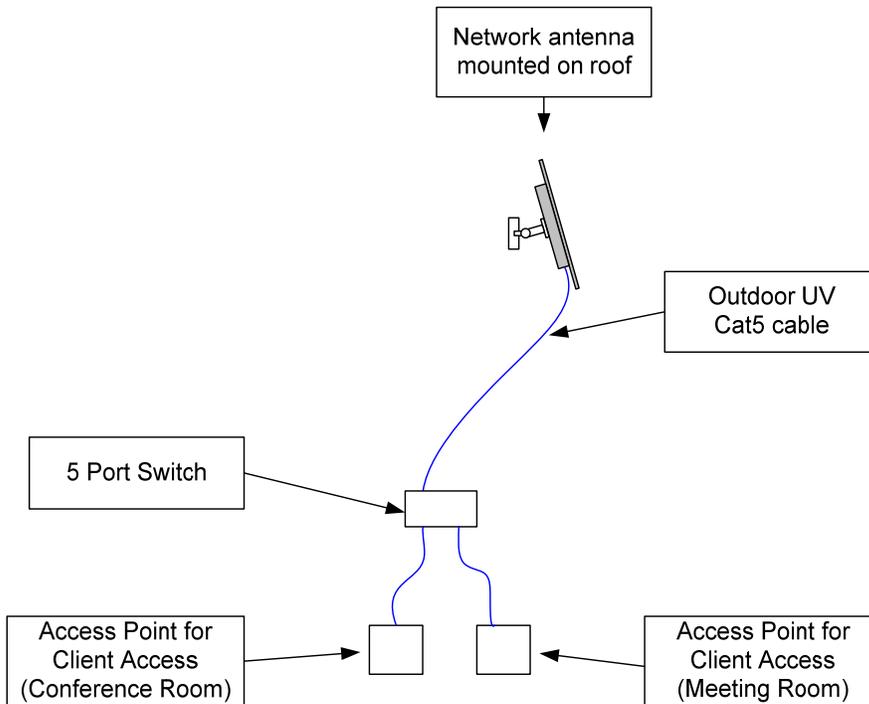


3478 Buskirk Ave.  
Pleasant Hill, CA 94523

**Drawing 3 – AmTrak Installation**



**Drawing 4 – City Hall Installation**



**Scope of Work**



**Light Poles:**

Electrical

- Tap existing power with fused leads with waterproof splice
- Connect 24VDC power supply to fused leads
- Drill hole AC receptacle stand-off enclosure
- Install Romex clamp in AC receptacle stand-off enclosure
- Run 14/2 cable from receptacle to power supply
  - Leave 48" at top and 24" at bottom
- Connect 14/2 cable to power supply using water proof splice

Mechanical

- Mount omni-directional antenna to light pole with steel bands
- Mount panel antenna/enclosure to light pole with steel bands
- Route 14/2 cable to enclosure and connect
- Route omni-directional antenna cable antenna and connect
- Align panel antenna to County Admin rooftop
- Lock down all adjustment nuts and secure with lock-tite

**AmTrak:**

Electrical

- Tap 120VAC source and install 120VAC duplex outlet in crawl space

Mechanical

- Mount indoor panel antenna for coverage of lobby
- Mount panel antenna/enclosure to breezeway or wall
- Route 14/2 cable from outlet to enclosure and connect
- Route panel antenna cable from outdoor panel antenna to indoor antenna
- Align panel antenna to County Admin rooftop
- Lock down all adjustment nuts and secure with lock-tite

**City Hall:**

Mechanical

- Mount 2ea indoor access points for coverage of City Hall
- Run Cat5 cable from indoor access points to 5 port Ethernet switch
- Mount outdoor antenna/enclosure on roof (non-penetrating)
- Run Cat5 cable from outdoor panel antenna to 5 port Ethernet switch
- Mount power strip and connect PoE injectors for radios
- Align panel antenna to County Admin rooftop
- Lock down all adjustment nuts and secure with lock-tite

