

RESOLUTION NO. 22-60

Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Extend The Existing Agreement With TPx To Provide Fiber Internet Connectivity For An Additional Three Years In The Amount Of Ninety-Nine Thousand Seven Hundred And Twenty Dollars (\$99,720)

WHEREAS, in 2018, the City Council authorized the City Manager to enter into an agreement with TPx to provide both internet and telephone services; and

WHEREAS, bandwidth demand has increased since 2018 and will continue to rise as more services are moved off-site and to the Cloud; and

WHEREAS, the City is looking to increase bandwidth capacity to support additional online services and engaged with TPx to negotiate terms to increase the bandwidth available to the City; and

WHEREAS, the City is looking to reduce telecommunications costs where practical; and

WHEREAS, TPx has been a reliable internet service provider and proposed a three-year term, which increases the current bandwidth, at a lower month rate than the existing agreement terms; and

WHEREAS, the proposed extension will reduce monthly internet expenses by \$322 per month or \$11,592 over the three-year term and will replace the internet portion of the existing agreement only; and

WHEREAS, The solution presented by TPx to provide fiber services are the best fit solutions for the City's network; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville authorizes the City Manager to extend the existing agreement to provide fiber internet connectivity with TPx for three additional years in the amount of ninety-nine thousand seven hundred and twenty dollars (\$99,720).

Resolution No. 22-60
TPX Renewal
City Council Meeting | June 7, 2022
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ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Tuesday, June 7, 2022, by the following vote:

AYES:	<u>5</u>	Mayor Bauters, Vice Mayor Medina and Council Members Donahue, Martinez and Welch
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:
John Bauters
67388D40E2C9450...
MAYOR

ATTEST:

DocuSigned by:
Sheri Hartz
FB7B5D0EAD6A4BE...
CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:
John Kennedy
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CITY ATTORNEY



Service Agreement

City Of Emeryville

TPx Communications will provide Customer with the specified type and amount of Services at the rates, and terms and conditions listed below and on the Rate Schedule(s) that follow, and Customer shall accept and pay for Services under the Terms and Conditions to which Customer agreed on the Telecommunications Account Agreement (TAA)/Master Service Agreement (MSA) and any related Addendums that follow that govern this Service Agreement, including any changes to Total Monthly Recurring Charges up to five percent (5%) and/or Total Non-Recurring Charges up to five percent (5%) for Services and Equipment specified on this Service Agreement. For any Access, MSx, and/or UCx Service listed below that is being added to Services currently provided to Customer at the below referenced Service Location, a new Service Term (as provided in the Term Length below) shall apply to any such Service.

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at www.tpx.com/rates.

The term for service(s) being ordered is 36 months. ("Term")

Customer Requested Due Date: 4/29/2022

RS ID	Title	Address	Non-Recurring	Recurring
873992	2449 POWELL ST, EMERYVILLE CA	2449 Powell St, Emeryville, CA 94608-1643	\$0.00	\$1,385.00
873991	1333 PARK AVE, EMERYVILLE CA	1333 Park Ave, Emeryville, CA 94608-3517	\$0.00	\$1,385.00
Totals			\$0.00	\$2,770.00

Equipment Addendum - Single Payment Purchase, Rental and/or Customer Provided Equipment set for at www.tpx.com/Equipment-Addendum.pdf

MSx Service Addendum set forth at www.tpx.com/MSx-Service.pdf

Agreed by: Customer Signature

Date

Customer Name (Print)

Title

Sales Representative Name

Phone

Agreed by: Authorized TPx Representative Signature

Date

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Approved As To Form:

DocuSigned by:

John Kennedy 05/13/2022

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Rate Schedule #873992

Quote ID: 477361

2449 POWELL ST, EMERYVILLE CA

3/15/2022

City Of Emeryville

Good through: 4/14/2022**Address:** 2449 Powell St, Emeryville, CA 94608-1643

The term for Service(s) being ordered is 36 months ("Term").

UCx pricing based upon Tier 3: Minimum Commitment of 100 User Bundles

Internet Services - Ethernet (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
	Ethernet 250 x 250 Mbps (ICB Code: bj-cd)	1	\$1,385.00	-	xNet	-	\$1,385.00
	IPv4 - IP Address - 4 (Included)	1	\$0.00	-	xNet	-	\$0.00
	Internet	1	\$0.00	-	xNet	-	\$0.00
						\$0.00	\$1,385.00



Rate Schedule #873991

Quote ID: 477361

1333 PARK AVE, EMERYVILLE CA

3/15/2022

City Of Emeryville

Good through: 4/14/2022**Address:** 1333 Park Ave, Emeryville, CA 94608-3517

The term for Service(s) being ordered is 36 months ("Term").

UCx pricing based upon Tier 3: Minimum Commitment of 100 User Bundles

Internet Services - Ethernet (Install)	Description	Qty	Each	Usage	Type	NRC	MRC
	Ethernet 250 x 250 Mbps (ICB Code: bj-cd)	1	\$1,385.00	-	xNet	-	\$1,385.00
	IPv4 - IP Address - 4 (Included)	1	\$0.00	-	xNet	-	\$0.00
	Internet	1	\$0.00	-	xNet	-	\$0.00
						\$0.00	\$1,385.00

INSTALLMENT PAYMENT DETAILS

Charge Description	Total Monthly Amount	Term
Total of Monthly Payment Amounts	\$0.00	

Currently there are no monthly installment payments.

NRCS NOT INCLUDED IN THE INSTALLMENT PAYMENT PLAN

Charge Description	Price
Total of opted-out NRC Amounts	\$0.00

Currently there are no opted-out NRCs.



Equipment Addendum - Installment Payment Purchase

This Equipment Addendum (this "Equipment Addendum") amends and modifies the Telecommunications Account Agreement (TAA) or Master Service Agreement (MSA) (referred to herein, as so amended and modified, as the "Agreement") between U.S. TelePacific Corp. d/b/a TPx Communications and/or its affiliated companies ("TPx") and Customer.

This Equipment Addendum governs devices supplied by TPx (devices collectively referred to herein as "Equipment"), and which said Equipment is used in conjunction with any of TPx's Services and is purchased by Customer from TPx via installment payment purchase.

1. EQUIPMENT ACQUISITION

Devices used in conjunction with any of TPx's Services (referred to herein as "Equipment") may be purchased by Customer from TPx via installment payment purchase option. Any Equipment governed by this Equipment Addendum will be described on the schedule substantially in the form of Exhibit I hereto delivered from time to time at the time of purchase (or other provisioning) thereof by TPx to Customer and authorized or otherwise confirmed by Customer (each, a "Delivered Equipment Schedule"). The terms of each Delivered Equipment Schedule shall be, and hereby are, fully incorporated by reference herein.

2. INSTALLMENT PAYMENT PURCHASED EQUIPMENT

- a. Installment payments will be added to each monthly invoice delivered to Customer under Section 2(e) of the Terms and Conditions Attachment to the Agreement, for the duration of the Initial Service Term, spread evenly over the total number of months contracted, in the amount(s) to be shown on the related Delivered Equipment Schedule(s).
- b. If, prior to the end of the Service Term, Services associated with any Equipment purchased via this Equipment Addendum are terminated for any reason, Customer shall remain liable for all remaining installment payments for the affected Equipment.
- c. Customer's obligations to make payments under any installment purchase of Equipment are separate and independent from Customer's obligations to make payments on the Services.
- d. Customer agrees that the right of TPx to receive installment payments relating to the Equipment purchased via this Equipment Addendum may be sold, transferred or otherwise assigned by TPx without consent.
- e. Credit Allowances. Credits granted by TPx for the interruption of services may not be applied to Equipment purchases or payments due or to become due under the Agreement (including this Equipment Addendum).
- f. Certain Waivers. Notwithstanding any provision contained in the Agreement (including this Equipment Addendum) to the contrary, it is agreed by the parties that:
 - i. Customer agrees not to assert any claim, set-off, recoupment, withholding or defense against TPx, any of its affiliates or its assignees or designees, that Customer may have against TPx, its affiliates or its assignees or designees, as applicable, in connection with the Agreement or any other agreement pursuant to which TPx (or any of its affiliates or designees) provides services to Customer or against the manufacturer of any equipment obtained under this Equipment Addendum;
 - ii. any assignee to which TPx shall assign its right to payments hereunder shall not have any obligation or responsibility to Customer pursuant to the Agreement (including this Equipment Addendum), and any such payment assignment shall not relieve TPx of any of its obligations hereunder and thereunder;
 - iii. CUSTOMER AGREES THAT ITS OBLIGATION TO MAKE ALL PAYMENTS WHEN DUE IN ACCORDANCE WITH THE AGREEMENT (INCLUDING THIS ADDENDUM) SHALL BE ABSOLUTE AND UNCONDITIONAL AND SHALL NOT BE SUBJECT TO ANY ABATEMENT, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM, INTERRUPTION, DEFERMENT OR RECOUPMENT FOR ANY REASON WHATSOEVER;
 - iv. where Customer does not make any payments under the Agreement (including this Equipment Addendum) pursuant to any of the foregoing conditions, TPx, as service provider pursuant to the Agreement, shall have the right to terminate Customer's right to use and receive the software and any maintenance pursuant to the Agreement; and
 - v. any affiliates, assignees or designees of TPx, and any collateral agent, administrative agent, or subsequent receivables purchaser is an intended third party beneficiary of the Agreement (including this Equipment Addendum) and therefore entitled to enforce the terms of the Agreement (including this Equipment Addendum) directly against Customer. Customer agrees that notwithstanding anything in the Agreement (including this Equipment Addendum), TPx and its assignees may at any time and without notice further assign the payments owing hereunder, in whole or in part.
- g. Ownership of Equipment. As the owner of the Equipment, Customer is the beneficiary of any applicable warranty and is responsible for all taxes, insurance and risk of loss related to the Equipment.
- h. Acceptance. Customer acknowledges acceptance of the Equipment upon delivery.

- i. **Equipment Purchase Cancellation.** Customer may cancel an Equipment purchase within twenty-four (24) hours of signing this Equipment Addendum. Notification of order cancellation must be emailed to billing@tpx.com. Cancellation of orders after twenty-four (24) hours will result in an order cancellation charge equal to 10% of the total amount for Equipment purchased.
- j. **Shipping Charges and Taxes.** Customer is responsible for all delivery or shipping charges, installation charges, and applicable taxes.
- k. **Warranty on Installment Purchase Payment Equipment.**
 - i. **Maintenance of Equipment.** TPx will provide maintenance and support for Equipment purchased from TPx, including software updates and patches, for as long as Customer maintains its associated Service with TPx.
 - ii. **TPx Replacement Obligation.** For Equipment purchased from TPx, TPx will replace any failed devices for as long as Customer maintains its associated Service, Customer's account remains in good standing, TPx has reasonable access to replacement Equipment, and Customer returns the Equipment in accordance with the terms stated within the manufacturer warranty; provided that TPx and Customer agree that Customer's obligations to make payments on the Services, on the one hand, and Customer's obligations to make payments on the Equipment purchased through an installment purchase option, on the other hand, are separate and distinct obligations of Customer and are subject to Section 2(d) of this Equipment Addendum. The replacement item may be a new or reconditioned device of equal or comparable value. The TPx replacement obligation starts when Equipment is delivered to Customer, lasts for the duration Customer maintains an associated Service, and overlaps the manufacturer's warranty. It covers accidental damage, liquid damage, or any Equipment defect. Associated shipping and/or service order fees may apply.
 - (A) **Exclusions.** Lost or stolen Equipment, or Equipment that appears to be damaged by intent, gross negligence or willful or reckless treatment shall not be covered under any TPx's replacement obligation. **Additionally, phone accessories and headsets shall not be covered under any TPx's replacement obligation. MSx service(s) equipment replacement obligation terminates when the manufacturer no longer supports the equipment.**
 - (B) **TPx's Sole Obligation.** TPx's sole obligation with respect to Equipment is to repair the Equipment, deliver to Customer an equivalent replacement Equipment, or if neither of the two foregoing options is reasonably available, TPx may, in its sole discretion, refund to Customer the purchase price paid for the Equipment. Replacement Equipment may be new or reconditioned. The foregoing is Customer's sole remedy, and TPx's sole obligation, with regard to defective Equipment.
 - iii. **Return / Exchange Policy for Purchased Equipment.**
 - (A) **Returns and Exchanges.** Should it be necessary to return Equipment, Customer may return it for a refund or exchange, excluding any shipping charges and subject to a restocking fee of twenty-five (\$25.00) dollars per unit, within thirty (30) days after delivery. Defective Equipment may be repaired or exchanged for the same or equivalent model only, at TPx's discretion. All returned Equipment must be unregistered, in complete original manufacturer's packaging, same condition as sold, with all accessories, literature, instructions, documentation and blank warranty cards.
 - (B) **Exclusions.** No returns will be allowed on: phone accessories and headsets, network cabling, original manufacturer computers, computer products, or software once opened.

l. If Customer fails to approve or reject the equipment and pricing information on the Delivered Equipment Schedule after three email requests, TPx will remove the Installment Payment option for the equipment listed on the Delivered Equipment Schedule, and the total equipment cost will be due immediately from Customer.

3. HARDWARE CLAIMS POLICY FOR ALL EQUIPMENT PURCHASED FROM TPX

Customer must inspect the Equipment carefully as to content and conditions upon receipt. All claims for damaged or missing items must be reported to TPx within two (2) business days of receipt of Equipment. In the event a package arrives damaged, it is the responsibility of Customer to contact TPx to inspect the package to assure full refund or replacement. All packaging must be retained until the problem is resolved.

4. LIMITATION OF LIABILITY

WITHOUT LIMITING ANY LIMITATION OF LIABILITY IN SUBSECTION (d) OF SECTION 5 OF THE TERMS AND CONDITIONS ATTACHMENT TO THE AGREEMENT, TPX LIABILITY IS LIMITED TO THE MONETARY VALUE OF THE EQUIPMENT PURCHASED.

SCHEDULE 1

Section A Customer Information

City Of Emeryville

Company Legal Name (Individual if Sole Proprietorship) _____

Doing Business As (DBA) _____

Legal Composition: ☐ Corporation ☐ General Partnership ☐ LLP ☐ LLC ☐ Sole Proprietorship

State Organized _____

1333 Park Ave Emeryville, CA

94608

Billing Address

Section B Acceptance

By signing below, the person signing on behalf of Customer personally represents and warrants to TPx that he or she has the authority and power to sign on behalf of Customer and bind Customer to the Agreement (including this Equipment Addendum). THE AGREEMENT INCLUDES AN ARBITRATION PROVISION WHICH REQUIRES THE BINDING ARBITRATION OF ANY AND ALL DISPUTES AND WAIVES CERTAIN RIGHTS TO JURY TRIALS AND/OR CLASS ACTIONS. The Agreement (including this Equipment Addendum) shall become a binding contract upon execution by Customer and acceptance by TPx.

ELECTRONIC CONTRACTING AND SIGNATURE ACKNOWLEDGMENT. To the extent that Customer executes the Agreement and/or the Equipment Addendum electronically, Customer agrees that (i) the Agreement (including this Equipment Addendum, as supplemented by each Delivered Equipment Schedule) is an electronic contract executed by Customer using Customer's electronic signature, (ii) Customer's electronic signature signifies Customer's intent to enter into the Agreement (including this Equipment Addendum, as supplemented by each Delivered Equipment Schedule) and that the Agreement (including this Equipment Addendum, as supplemented by each Delivered Equipment Schedule) be legally valid and enforceable in accordance with its terms to the same extent as if Customer had executed the Agreement (including this Equipment Addendum) using its written signature and (iii) the authoritative copy of the Agreement (including this Equipment Addendum, as supplemented by each Delivered Equipment Schedule) ("Authoritative Copy") shall be that electronic copy that resides in a document management system designated by TPx for the storage of authoritative copies of electronic records, which shall be deemed held by TPx in the ordinary course of business. Notwithstanding the foregoing, if the Authoritative Copy is converted by printing a paper copy which is marked by TPx as the original (the "Paper Contract"), then Customer acknowledges and agrees that (1) Customer's signing of the Agreement (including this Equipment Addendum) with Customer's electronic signature also constitutes issuance and delivery of such Paper Contract, (2) Customer's electronic signature associated with the Agreement (including this Equipment Addendum, as supplemented by each Delivered Equipment Schedule), when affixed to the Paper Contract, constitutes Customer's legally valid and binding signature on the Paper Contract and (3) subsequent to such conversion, Customer's obligations will be evidenced by the Paper Contract alone.

X _____

Agreed by: Customer Signature

_____ Date

_____ Customer Name (Print)

_____ Title

_____ Sales Representative Name

_____ Phone

Example of EXHIBIT I
[FORM OF] DELIVERED EQUIPMENT SCHEDULE
To be completed upon delivery of equipment

Reference is made to the Equipment Addendum (the "Equipment Addendum") relating to the Telecommunications Account Agreement (TAA) or Master Service Agreement (MSA) (referred to herein, as so amended and modified, as the "Agreement") between U.S. TelePacific Corp. d/b/a TPx Communications and/or its affiliated companies ("TPx") and [CUSTOMER] ("Customer"), which Equipment Addendum was executed and accepted by Customer on [DATE].

This schedule (this "Schedule") is a "Delivered Equipment Schedule" contemplated by the Equipment Addendum and shall be part of and subject to the Equipment Addendum for all purposes automatically and without further action by any person upon TPx's delivery of this Schedule together with the Equipment described below and Customer's authorization or other confirmation hereof in electronic form or otherwise.

TPx has provided Customer with the specified type and amount of Equipment at the prices and terms and conditions listed below, and Customer shall accept and pay for the Equipment under the Equipment Addendum as supplemented by this Schedule, the Agreement and any related Addendums that follow that govern this Schedule, the Equipment Addendum and the related Telecommunications Account Agreement (TAA)/Master Service Agreement (MSA).

Federal, State and Local Taxes and Other Charges will be applied in accordance with the definitions stated at www.tpx.com/rates.

The following Equipment will be purchased by Customer from TPx via installment purchase (as contemplated by clause (ii) under Section 1 of the Equipment Addendum):

Quantity	Item description	Price per unit	Total purchase amount/price	Number of installment payments	Amount of monthly payment (*)

(*) As contemplated by Section 2(a) of the Equipment Addendum, installment payments will be added to each monthly invoice delivered to Customer under Section 2(e) of the Terms and Conditions Attachment to the Agreement (the "Terms and Conditions"). As contemplated by Section 2(g) of the Terms and Conditions, each monthly invoice shall be due and payable upon presentation, and shall become past due after the Pay By Date printed on the invoice.

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Customer Contact Authority

TPx Communications has an obligation, and Customer has a right, under federal or state law to protect the confidentiality of your Customer Proprietary Network Information (CPNI). CPNI includes information relating to the quantity, technical configuration, type, destination, location and amount of use of the services Customer purchases from TPx. You can help prevent unauthorized access to that information by indicating below the parties authorized to access that information.

Authority Roles

Primary Account Authority / Authorized Signee: This user will have full access to all CPNI data related to network configuration and usage. This user will have full administrative access for the account which includes managing account settings, viewing invoices, making payments, initiating new orders, providing price change approvals, and overseeing trouble reports. *Only this user will be authorized to sign any Service Agreements or Equipment Addendums.* Only this user will be authorized to add "secondary" users to the authorized list.

Alternate Primary Account Authority: This user will have full access to all CPNI data related to network configuration and usage. This user will have partial administrative access for the account which includes managing account settings, making payments, initiating new orders, providing price change approvals, and overseeing trouble reports.

Agent Contact: This user will have access to CPNI data and for the account in accordance with their Authority Level which is to be determined by the Primary Account Authority / Authorized Signee.

Voice Vendor: This user will have access to CPNI data and for the account in accordance with their Authority Level which is to be determined by the Primary Account Authority / Authorized Signee.

Data Vendor: This user will have access to CPNI data and for the account in accordance with their Authority Level which is to be determined by the Primary Account Authority / Authorized Signee.

Authority Levels

R/W/A (Read/Write/All) Grants full authority to CPNI usage and network configuration data. Permits authority to request account information, view and remit payments, place and oversee orders, and initiate & manage trouble reports.

R/W/B (Read/Write/Bill) Grants authority to CPNI network configuration data in support of resolving billing related issues. Permits authority to view invoices, request invoice related changes on the account such as the billing address, and to view and remit payments.

R/W/O (Read/Write/Orders) Grants authority to CPNI network configuration data in support of order implementation. Permits authority to oversee all open orders against the account and to initiate orders against the account for existing service changes or ancillary service additions

R/W/T (Read/Trouble) Grants authority to CPNI network configuration data in support of resolving trouble on the account. Permits authority to report and look after trouble related to existing services on the account.

PRIMARY ACCOUNT AUTHORITY/ AUTHORIZED SIGNED				<input type="checkbox"/> Email Opt Out	
Name		Title			
Phone		Cell		Email	
Authority Level: RWA					
ALTERNATE PRIMARY ACCOUNT AUTHORITY				<input type="checkbox"/> Email Opt Out	
Name		Title			
Phone		Cell		Email	
Authority Level: RWA					
AGENT CONTACT			COMPANY NAME		
Name		Title			
Phone		Cell		Email	
Duration: <input type="checkbox"/> This installation only <input type="checkbox"/> Term of contract					
Authority Level: <input type="checkbox"/> RWA <input type="checkbox"/> RWB <input type="checkbox"/> RWO <input type="checkbox"/> RWT					
VOICE VENDOR			COMPANY NAME		
Name		Title			
Phone		Cell		Email	
Duration: <input type="checkbox"/> This installation only <input type="checkbox"/> Term of contract					
Authority Level: <input type="checkbox"/> RWA <input type="checkbox"/> RWB <input type="checkbox"/> RWO <input type="checkbox"/> RWT					
DATA VENDOR			COMPANY NAME		
Name		Title			
Phone		Cell		Email	
Duration: <input type="checkbox"/> This installation only <input type="checkbox"/> Term of contract					

Authority Level: ☐ RWA ☐ RWB ☐ RWO ☐ RWT

"I grant permission to TPx to provide access to CPNI to the authorized account contacts listed above subject to the designated authority level."

City Of Emeryville

Company Legal Name

Authorized Signature: _____ **Date:** _____

Printed Name: _____ **Title:** _____

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