

RESOLUTION No. 2020-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROCKLIN
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT
WITH WAVE BROADBAND LLC FOR WI-FI IN THE CITY'S COMMUNITY PARKS

The City Council of the City of Rocklin does resolve as follows:

WHEREAS, as a service to the public, the City has provided free Wi-Fi access in the City's community parks for the past five years, through a partnership with Wave Broadband; and

WHEREAS, continued access to Wi-Fi in the community parks is desired by youth sports leagues and others using the parks; and

WHEREAS, Wave Broadband is willing to continue to provide Wi-Fi at City community parks for the next five years, at an annual fee of \$19,800, and in-kind marketing services.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Rocklin as follows:

Section 1. The City Council of the City of Rocklin hereby authorizes the City Manager to Execute an Agreement with Astound Broadband LLC, dba WAVE Broadband for public Wi-Fi at Rocklin community parks, in substantially the form attached hereto as Exhibit "A."

PASSED AND ADOPTED this 10th day of March, 2020, by the following vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:
ABSTAIN: Councilmembers:

Greg Janda, Mayor

ATTEST:

Hope Ithurburn, City Clerk

EXHIBIT A

AGREEMENT TO PROVIDE PUBLIC WIFI IN ROCKLIN'S COMMUNITY PARKS

(City of Rocklin/Astound Broadband, LLC)

This Agreement for public Wi-Fi in Rocklin's Community Parks (this "Agreement") is entered into as of this 10th day of March 2020, by and between the City of Rocklin, a municipal corporation, hereinafter referred to as "City," and Astound Broadband LLC, a Washington limited liability company, doing business as Wave Broadband, hereinafter referred to as "Wave Broadband"

RECITALS

- A. Wave Broadband provides cable television, broadband internet, VoIP telephone, data transport, dark fiber and related telecommunications services to residents, commercial enterprises, and government customers.
- B. City and Wave Broadband desire to cooperate with each other and enter into an agreement pursuant to the law for the purpose of sponsoring and promoting public WIFI and to enhance the quality of life and community parks experience for all citizens of Rocklin.
- C. In exchange for the City's payment of a monthly fee of \$1,650 and in-kind advertising services, Wave Broadband will make WIFI services ("Wi-Fi Services") available to the public at no additional cost to the public, in the City's community parks: Whitney Park, Kathy Lund Park, Johnson-Springview Park, Margaret Azevedo Park and Twin Oaks Park (collectively, the "Community Parks").

A G R E E M E N T

In consideration of the mutual covenants and promises herein contained, City and Wave Broadband agree the Recitals set forth above are true and correct, and further agree as follows:

1.0 TERM AND TERMINATION

The term of this Agreement is five (5) years, and shall commence on the date on which all of the updated equipment for Wi-Fi Services have been installed and are functioning properly at all five of the Community Parks. Either party may terminate this Agreement upon 60 days written notice to the other party.

2.0 CONSIDERATION

- 2.1 In exchange for Wave Broadband installing updated equipment, performing on-going maintenance of the equipment, and providing the Wi-Fi Services at Rocklin's Community Parks, the City shall pay Wave Broadband \$1,650 per month payable upon receipt of invoice. This amount shall be pro-rated for any partial month. The total payment by the City to Wave Broadband under this Agreement shall not exceed \$19,800.
- 2.2 As additional consideration, Wave Broadband will have the right to advertising as specified in the attached EXHIBIT A.

3.0 DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF WAVE BROADBAND

- 3.1 Wave Broadband agrees to provide all equipment and maintenance necessary to provide WIFI service to public at the City's Community Parks.
- 3.2 Wave Broadband will provide a synchronous 50 mbps fiber circuit to the five City Community Parks with one to two public access points, as specified in EXHIBIT B to this Agreement. Wave Broadband shall provide working equipment that provides WIFI service 500 – 700 feet from all installation points in the Community Parks with adjustments to limit accessibility in residences. Equipment is to be installed at the noted center of WIFI radius in each park as shown on EXHIBIT B of this Agreement. For purposes of this Agreement, all Wave Broadband equipment and facilities installed and used to provide Services to the Community Parks shall be referred to as the "Wave Broadband Equipment." Wave Broadband will also provide relevant technical and engineering training and support to the City's information technology personnel as needed for facilitating the City's use of the Services. Wave Broadband shall have no obligation to provide technical support directly to members of the public or other end users of the Services.

The parties anticipate that the Wave Broadband Equipment will be installed and located on City owned property and/or City controlled public rights-of-way. The City shall not charge Wave Broadband any rental or license fee in exchange for the right to locate the Wave Broadband Equipment on such property. The parties will cooperate in Identifying appropriate locations for placement of the Wave Broadband Equipment in order to permit the provision of Services contemplated under this Agreement, but if appropriate locations cannot be found, the failure will be treated as a Force Majeure event. The City, at no cost to Wave, will issue any municipal regulatory permits necessary for the placement and installation of the Wi-Fi facilities.

- 3.3 Wave Broadband shall maintain and replace (as deemed necessary by Wave Broadband in its reasonable business judgment) the Wave Broadband Equipment, and provide technical support to the City's information technology personnel on software and equipment operations as needed for facilitating the City's use of the Wi-Fi Services.
- 3.4 The City understands and agrees that Wi-Fi connectivity, by the nature of the technology, will not be available uniformly throughout an entire access area. Additionally, the configuration of the Services will be designed to support properly set up VPNs, but Wave Broadband shall have no obligation to the City or any member of the public or other end user of the Services to provide active support for such connections.
- 3.5 The WIFI shall be available from 5 am to 10:30 p.m. 7 days a week. The Wi-Fi will be shut off at all other times. The City understands and agrees that the Services may occasionally be unavailable for brief periods of time due to either scheduled maintenance or unplanned outages. Wave Broadband agrees to use commercially reasonable efforts to minimize any such periods of unavailability.
- 3.6 Maps showing the installation locations for the access points and the Wi-Fi radius to be provided at each of the Community Parks are attached to this Agreement as EXHIBIT B.

4.0 DUTIES, OBLIGATIONS, AND RESPONSIBILITIES OF CITY

- 4.1 City shall maintain areas of equipment installation in the five Community Parks, and provide first line technical support for public access. City shall maintain the user landing page.
- 4.2 The City shall pay all electric bills associated with the equipment Wave Broadband installs in connection with the Services and will be a first point of contact for the public for operational issues.
- 4.3 Because the Wave Broadband Equipment will be installed on City owned or operated property, the City shall have the obligation to take reasonable security measures with respect to the Wave Broadband Equipment. City shall not be responsible for the negligent, willful misconduct, or criminal conduct of others.
- 4.4 The City shall reimburse Wave Broadband for the costs of any maintenance, repair or replacement of the Wave Broadband Equipment that is necessitated due to the negligence or willful misconduct of the City, its employees, agents or contractors.

- 4.5 Users of the Services will be initially directed to a portal "splash" or "logon" page which will be provided and maintained by the City and which will be subject to Wave Broadband's review and approval. The "splash" or "logon" page shall contain an acknowledgement by the user that the Services are public, are not secure, and that data and information sent or received using the Services may be intercepted by others. Users shall be warned not to send confidential or sensitive personal information or any financial information using the Services. In order to login and use the Services, all users will be required to acknowledge the foregoing and release any and all claims against Wave Broadband and the City.

5.0 ADMINISTRATION OF AGREEMENT

5.1 City appoints the City Manager or his designee and Wave Broadband appoints its Regional Sales Manager for the Sacramento Region or her designee to administer this Agreement. The City Manager and Regional Sales Manager for Sacramento and/or their respective designees shall have full authority to the extent provided by law to administer this Agreement. Administration of the Agreement includes but is not limited to, developing accounting and other procedures, scheduling maintenance operations and providing access to the equipment.

5.2 Wave Broadband and the City will designate at least one qualified full-time employee who will serve as its on-site "Project Manager." The parties' respective Project Managers will be responsible for the general administration of all matters relating to the installation and operation of the Wi-Fi facilities and be the primary source of, and contact for, all reports and other communications between the parties under the Agreement. Such authorized representatives will undertake to answer questions posed by the other party, will examine any documents and/or proposals submitted by the other party and will promptly render answers or decisions pertaining thereto to avoid delay in the orderly progress of the installation, operation and maintenance of the Wi-Fi facilities. The parties initially designate the individuals named in the table below as Project Managers; however, either party may substitute individuals of equivalent position and responsibility as needed by providing written notice of same to the other party.

Wave Broadband's Project Manager:

Email:

Phone:

Cell Phone:

Fax:

City's Project Manager: Kevin Huntzinger,
Deputy Director of Parks and Recreation

Email: Kevin.huntzinger@rocklin.ca.us

Phone: 916-625-5269

Cell Phone: 916-474-9575

Fax: 916-625-5296

Wave Broadband's Project Manager:

Email:

Phone:

Cell Phone:

Fax:

City's Project Manager:

Email:

Phone:

Cell Phone:

Fax:

6.0 FUTURE IMPROVEMENTS

Wave Broadband and City agree that all future improvements to the equipment shall be approved in advance by both Wave Broadband and City. The cost of any improvements shall be borne by Wave Broadband unless the parties otherwise agree. City and Wave Broadband agree that all future improvements shall comply with all applicable local, state, and federal, the Rehabilitation Act of 1973, health and safety regulations, and Americans with Disabilities Act standards.

7.0 INSURANCE

Throughout the term of this agreement, each party shall maintain in full force and effect Worker's Compensation, Employer's Liability, Commercial General Liability Insurance, and Automobile Insurance in the coverages and minimum policy limit

required by, and set forth in, the City and Wave Broadband Franchise Agreement approved by City Council Resolution 2006-246.

8.0 LIMITATION OF LIABILITY

8.1 Neither party shall be liable for any loss or damage occasioned by a Force Majeure event. Except as expressly provided to the contrary elsewhere in this Agreement, Wave Broadband's total liability for any and all causes and claims arising under this Agreement, whether based in contract, tort, warranty or otherwise shall be limited to the lesser of: (i) the actual direct damages sustained by the City; or (ii) an amount equivalent to the total monthly service fees received by Wave Broadband from the City for the Services at issue during the preceding twelve (12) month period.

8.2 EXCEPT FOR CLAIMS ARISING FROM A PARTY'S INTENTIONAL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES WHATSOEVER, ARISING OUT OF OR INCURRED IN CONNECTION WITH A PARTY'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, INCLUDING, BY WAY OF EXAMPLE AND NOT BY WAY OF LIMITATION, LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA OR COST OF PURCHASING REPLACEMENT SERVICES, EVEN IF THE OTHER PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH SPECIAL DAMAGES.

9.0 DISCLAIMER OF WARRANTIES; ACCEPTANCE OF RISK.

9.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WAVE BROADBAND MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, EITHER IN FACT OR BY OPERATION OF LAW, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE OR USE OF ANY SERVICES PROVIDED PURSUANT TO THIS AGREEMENT, ALL OF WHICH WARRANTIES ARE EXCLUDED AND DISCLAIMED.

9.2 THE SERVICES WILL BE UNSECURED AND WILL BE AVAILABLE TO MEMBERS OF THE PUBLIC (THE CITY'S "END USERS"). THE CITY UNDERSTANDS AND AGREES THAT WAVE BROADBAND HAS NO CONTROL OVER THE INTERNET OR THE CONTENT OF INFORMATION, DATA, VIDEOS OR OTHER MATERIALS THAT MAY BE SENT OVER THE INTERNET USING THE WAVE BROADBAND EQUIPMENT. WAVE BROADBAND HAS NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY OR RESPONSIBILITY WHATSOEVER FOR THE CONTENT OF ANY INFORMATION TRANSMITTED OR RECEIVED THROUGH THE SERVICES, FOR SERVICE INTERRUPTIONS ATTRIBUTABLE TO THE CITY'S NETWORK OR TO THE ACTIONS OF THE CITY'S END USERS, FOR THE FAILURE OR

MALFUNCTION OF ANY EQUIPMENT PROVIDED BY THE CITY OR THE CITY'S END USERS WITH WHICH THE CITY OR THE CITY'S END USERS ACCESS OR ATTEMPT TO ACCESS THE SERVICES. THE CITY AND THE CITY'S END USERS ACCESS THE SERVICES AT THEIR OWN RISK.

10.0 MUTUAL INDEMNIFICATION

Each party agrees to indemnify and hold the other Party, its officers, employees, agents, and authorized volunteers harmless from and against any and all claims, liabilities, demands, losses, damages, expenses, costs (including without limitation costs and fees of litigation) of every nature (collectively, the "Claims") incurred or paid out due to or arising out of the indemnifying party's negligence or willful misconduct performed in connection with this Agreement.

11.0 FORCE MAJEURE EVENTS

Neither party will have any claim or right against the other for any failure of or delay in performance by the other party if the failure or delay is caused by or the result of any act of nature, fire, flood, hurricane or other natural catastrophe, terrorist actions, vandalism, cable cut or other similar catastrophe, any law, order, regulation, direction or action of any governmental, civil or military authority, national emergency, insurrection, riot or war; inability to obtain equipment, material or other supplies, strike, lockout or other similar occurrence beyond the control and without the fault or negligence of the affected party. Notwithstanding the foregoing, if the force majeure delay exceeds 30 days, either party may terminate the Agreement immediately on written notice without incurring any liability hereunder.

12.0 INTEGRATION

This Agreement, all attached exhibits, and all related documents referred to in this Agreement, constitute the entire agreement between the parties. There are no oral or parol agreements which are not expressly set forth in this Agreement and the related documents being executed in connection with this Agreement. This Agreement may not be modified, amended, or otherwise changed except by a writing executed by the party to be charged.

13.0 THIRD-PARTY RIGHTS

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies. There are no third party beneficiaries to this Agreement.

14.0 SEVERABILITY

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the fullest extent permitted by law.

15.0 WAIVERS

No waiver or breach of any provision shall be deemed a waiver of any other provision. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

16.0 INCORPORATION OF EXHIBITS.

All attached exhibits are incorporated in this Agreement by reference.

17.0 AUTHORITY OF PARTIES.

All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

18.0 COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile or email transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.

19.0 GOVERNING LAW; VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any action or proceeding arising out of, or related to, this Agreement shall be in Placer County, California, which is where the Parties' properties subject to this Agreement are located and all rights and obligations of the Parties described herein shall be performed.

20.1 AMENDMENTS

The terms of this agreement may be modified at any time by the mutual consent and written agreement of the parties.

This agreement has been entered into as of the date first above written.

CITY OF ROCKLIN, "City"

ASTOUND BROADBAND, LLC,
"Wave Broadband"

Stephen Rudolph,
City Manager

Name: _
Title: _

EXHIBIT A
CITY OF ROCKLIN PARKS AND RECREATION AND
WAVE BROADBAND IN-KIND ADVERTISING
SUMMARY
(WIFI IN ROCKLIN COMMUNITY PARKS)

1. Eight "City Streetlight Banner Program" banners on approved light poles at key City locations. Advertising copy to be determined by Wave and meet the approved guidelines of the program.
2. Ten Streetlight Banners at park locations, two per park. These locations are specific to the WIFI program, and are not available to other businesses. The message on these banners will specifically highlight the partnership between the City of Rocklin and Wave Broadband,
3. Twenty five (five per park) metal signs throughout each park, with message that highlights City and Wave Broadband WIFI partnership. The specific design of the metal signs will be pursuant to mutual agreement of the parties.
 - a. 12" X 18" single sided, medium gauge aluminum sign
 - b. Premium vinyl lettering, projected to last five to fifteen years depending on sun exposure.
 - c. Locations at high occupancy areas such as playgrounds, ball fields, and snack bars.
4. Public Service Announcement (PSA) in approved format by Clear Channel Communications. The City will add this to run with other City PSAs in available, unsold by Clear Channel, electronic billboard advertising space.
5. Dedicated Wi-Fi webpage on City website.
6. Annual Recreation Guide advertisement page inside of back cover.
7. Annual Parks and Recreation Community Special Event Sponsorship with a value not to exceed \$7,500 when applicable.
8. WIFI user landing page featuring the partnership with the City of Rocklin and Terms of Use. "Agree" button will take the user to a second password page featuring a non-competing business for which the City will sell advertising space to offset the City's monthly cost of community park public WIFI.
9. Dedicated user login page.
10. PSA on City website front page.
11. Professionally written and distributed press release.

Exhibit B-1

Wave Wi-Fi Coverage Polygon - Johnson Springview Park



Exhibit B-2

Wave Wi-Fi Coverage Polygon – Kathy Lund Park

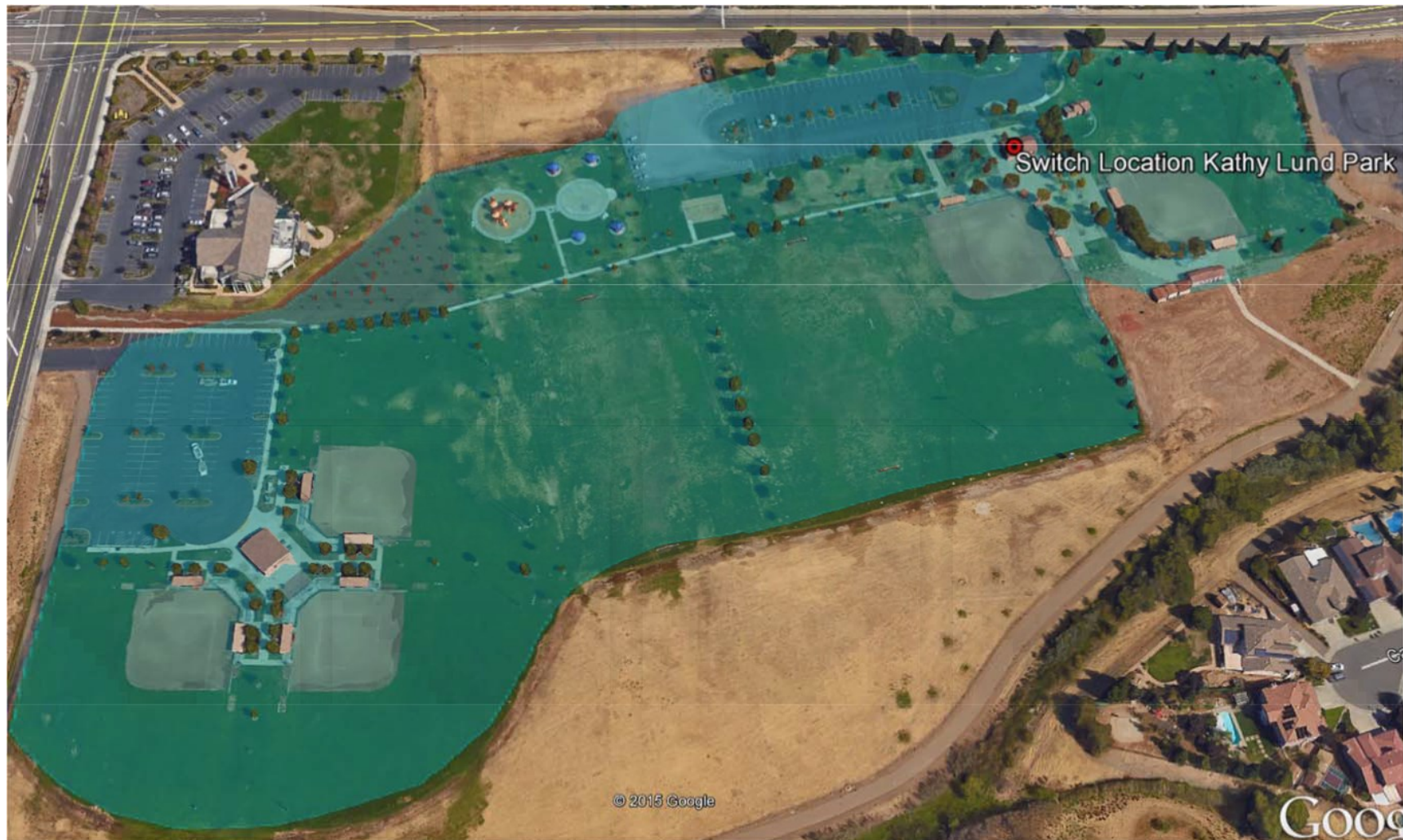


Exhibit B-3

Wave Wi-Fi Coverage Polygon – Margaret Azevedo Park



Exhibit B-4

Wave Wi-Fi Coverage Polygon – Whitney Park

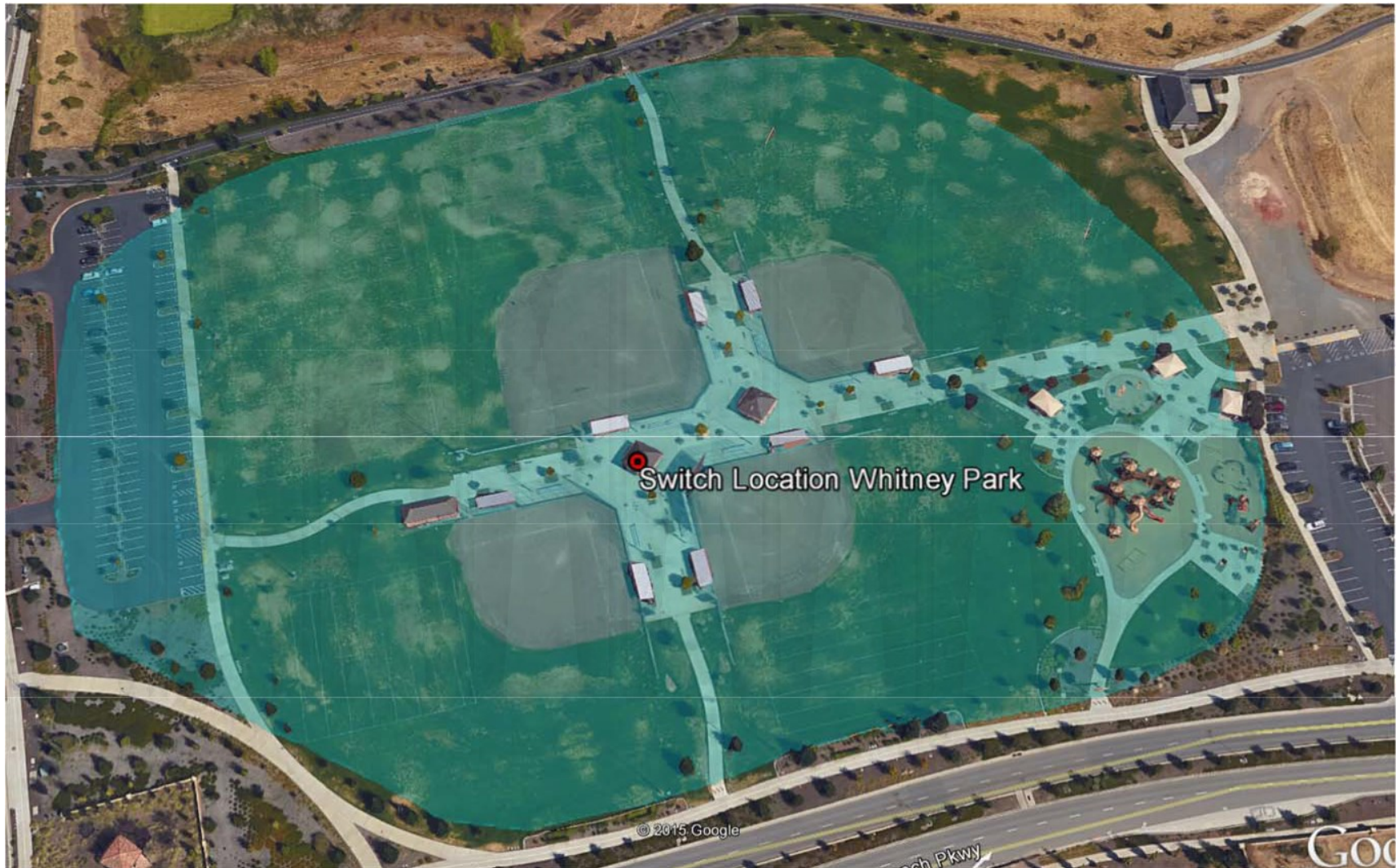


Exhibit B-5

Wave Wi-Fi Coverage Polygon – Twin Oaks Park

