



AGENDA REPORT

Meeting Date: March 1, 2011

Item Number: F-19

To: Honorable Mayor & City Council

From: Scott Miller, Director of Administrative Services and CFO
Noel Marquis, Assistant Director of Administrative Services - Finance

Subject: **APPROVALS RELATED TO VARIOUS CITY PURCHASING AND BUDGET TRANSACTIONS AS DESCRIBED HEREIN**

Attachments: 1.) Agreement

Item A. APPROVAL OF A MASTER SERVICES AGREEMENT WITH XO COMMUNICATIONS, INC.

RECOMMENDATION

Staff recommends that the City Council approve the agreement between the City and XO Communications for internet services and establishment of a disaster recovery site for City systems.

INTRODUCTION

The agreement with XO Communications represents an expansion of internet capabilities for the City. It will establish the City as its own presence on the internet, as well as serve the key interest of having a secure offsite location, the One Wilshire Data Center in downtown Los Angeles, as a disaster recovery site.

DISCUSSION

The City of Beverly Hills currently contracts with an internet service provider for internet services. The existing 5-year contract term is coming to an end, and the City has been researching ways to increase bandwidth, gain greater control, flexibility and scalability.

With the increasing demand for video and multimedia applications, Information Technology (IT) continually strives to ensure that the City's IT infrastructure can sustain

the increasing technology load. This includes ensuring scalability for growth, speed and increased capacity for internet access. The agreement with XO Communications provides for the greater flexibility sought by the City to offer expanded internet services to City staff, BHUSD, and potentially to other entities including other local government agencies.

This agreement would essentially remove the middle-man from the City's internet services establishing the City as a primary presence on the internet. The One Wilshire Data Center location also allows the City to establish an offsite disaster recovery location where key City systems can be securely replicated, stored, and managed.

FISCAL IMPACT

Staff has anticipated monthly fees of \$4,650 (\$18,600 for the 4 remaining mouths of this fiscal year) through the end of this fiscal year, with potential services for up to \$10,000 for the same time period. The anticipated annual cost for internet and co-location services is an amount not to exceed \$71,800, including \$55,800 for internet services and an amount not to exceed \$16,000 for co-location services related to the City's disaster recovery systems.

Item B. APPROVAL OF AN APPROPRIATION IN THE AMOUNT OF \$70,000 FOR NEGOTIATIONS SERVICES FROM LIEBERT CASSIDY WHITMORE; AND,

APPROVAL OF A CHANGE ORDER IN THE AMOUNT OF \$70,000 TO THE PURCHASE ORDER TO LIEBERT CASSIDY WHITMORE FOR A TOTAL NOT TO EXCEED \$122,100

RECOMMENDATION

Staff recommends that the City Council move to appropriate funds in the amount of \$70,000 from the Policy Administration and Legal Internal Service Fund to the Administrative Services Department Labor Relations program as follows:

<u>FROM</u>		<u>TO</u>	
\$70,000	Policy Administration and Legal Internal Service Fund unrestricted balance 48-30000	\$70,000	Labor Relations – Legal fees 4800403 73250

Staff also recommends that the City Council approve a change order in the amount of \$70,000 to the purchase order to Liebert Cassidy Whitmore for a total not-to-exceed amount of \$122,100.

INTRODUCTION

Liebert Cassidy Whitmore is the City's chief negotiator with all bargaining groups and is involved in all labor related matters, provides labor negotiations for Fire and Police negotiations as well as ongoing issues with the Municipal Employees Association (MEA), and salary surveys negotiations for Confidential, Safety Support, Supervisors and Management & Professional bargaining groups.

DISCUSSION

The City of Beverly Hills currently contracts with Liebert Cassidy Whitmore to assist the City in its relations and negotiations with its employee bargaining groups, and is involved in all labor related matters. The increase of \$70,000 is a direct result of the number of salary surveys and negotiations required during this current fiscal year including initiation of the negotiation process with the Police and Fire associations in preparation of their contract expirations in October of this year.

FISCAL IMPACT

Funds were not budgeted but are available from the Unrestricted Fund Balance of the Policy Administration and Legal Internal Service Fund for this purpose.


Ndel Marquis

Finance Approval



Scott G. Miller

Approved By

Attachment 1

XO

Company Name: City of Beverly
Hills, Inc
Master: MSA489460

MASTER SERVICES AGREEMENT

This AGREEMENT is made and entered into this ___ day of January, 2011 (the "Effective Date"), by and between XO Communications Services, Inc., a Delaware corporation, on behalf of itself and its operating affiliates (collectively referred to hereinafter as "XO"), whose principal place of business is located at 13865 Sunrise Valley Drive, Herndon, VA 20171 and the City of Beverly Hills, Inc, (hereinafter referred to as "City" or "Customer"), a California municipal corporation, whose place of business is located at 455 North Rexford Drive, Beverly Hills, California, United States 90210. As used in this Agreement, "Party" means either City or XO, as appropriate and "Parties" means City and XO.

ARTICLE 1 - DEFINITIONS

Terms have their normal or common meaning or the meaning given them in the Tariffs, except as defined in this Agreement:

(a) **Access Service Request or ASR** means a Service request that specifies the type and quantity of Service desired, Premises address, Points of Termination, protocols, requested Start of Service Date, and other information needed to provision Service.

(b) **Affiliate** is a legal entity that controls, is controlled by, or is under common control with a Party. "Control" means the ability to affect, directly or indirectly, the policies, management and operations of an entity through ownership of voting securities, by contract, or otherwise.

(c) **Agreement** means this Master Services Agreement, including incorporated schedules, appendices, addenda, Service Exhibits, Service Orders, Tariffs, and other documents attached hereto and made a part hereof, as well as any written amendments to this Agreement executed by the authorized representatives of the Parties.

(d) **Circuit** means a telecommunications facility connecting two or more City locations.

(e) **Emergency Maintenance** means maintenance which, if not accomplished promptly by XO, could result in damage to XO's Network or a degradation or loss of Service to City, its End Users or other XO customers.

(f) **End User** means a user to whom City provides telecommunications or related services utilizing, in part, Service provided under this Agreement.

(g) **Governmental Charges** means charges, both retroactive and prospective, that XO is required or permitted to collect from the City in connection with its furnishing Service. The charges result from the application, enforcement or interpretation of existing, new or revised laws or regulations, actions taken by federal, state, local

or foreign regulatory authorities, or judicial acts or decisions (collectively, "Governmental Activity") that directly or indirectly impose costs on XO. Governmental Charges include, but are not limited to, those arising out of local, state, federal, foreign and third party actions, programs or requirements relating to Universal Service, number portability, TRS, E911, access, reciprocal compensation, franchising and CALEA.

(h) **International Service.** Service between a location or locations within the United States and a location or locations outside the United States.

(i) **Network** means the telecommunications network of one of the Parties.

(j) **Off-Net Services** means Services provided where one or more of the locations is not served directly by XO's Network, thereby requiring that a portion of Service be furnished by a third party service provider. When XO provides Off-Net Service, the terms, conditions and pricing is done on an individual case basis ("ICB") and will be subject to the requirements of the underlying service provider for that part of the Service it provides. XO will order service from the third party and will invoice City the third party charges, but it will not be responsible for the third party service provider's performance.

(k) **On-Net Services** means Services provided where all locations are served directly by XO's Network, thereby allowing the entire Service to be furnished by XO.

(l) **Planned Service Outage** means any Service Outage caused by scheduled maintenance or planned enhancements or upgrades to the XO Network.

(m) **Point of Presence or POP** means a specific location within a Local Access Transport Area (LATA) where Service originates or terminates.

(n) **Point of Termination** means a location where XO Service responsibilities end and City or End User responsibilities begin. A Point of Termination may be the demarc where XO and City interconnect at City Premises, a local exchange carrier's central office, a long-distance carrier's POP, or End-User sites identified on an ASR.

(o) **Premises** means the address at which Service is provided and identified as a Point of Termination or Service Location on the Service Order.

(p) **Service** means XO-provided telecommunications or related service or collocation license, as further described in the applicable Service Exhibit and as specifically identified on a Service Order.





(q) **Service Exhibit** means an attachment to this Agreement containing product-specific terms and conditions for a particular Service, including any schedules and attachments thereto.

(r) **Service Order** means an ASR or other applicable service ordering form containing information essential for XO to provision Service.

(s) **Service Outage** means a disruption or material degradation of On-Net Service as set forth in the applicable Service Exhibit.

(t) **Service Request Date** is the date requested by City for service availability as indicated on a Service Order.

(u) **Start of Service Date** for a Service shall be the later of (i) the Service Request Date, or (ii) the date XO notifies City that the Service is installed or connected, and available for City use. Notwithstanding the above, the Start of Service Date shall never be later than the date City or an End User begins to use the Service.

(v) **Tariffs** pertain to a schedule of charges and regulations filed by a service provider with the Federal Communications Commission or a state public utility commission. A Tariff establishes the legal relationship between the service provider and its customers with respect to the provision and receipt of the tariffed/regulated service.

(w) **Taxes** are amounts XO is required or permitted by federal, state, local or foreign taxing authorities to collect from City in connection with its furnishing Service. Taxes include, but are not limited to, personal property taxes on property used to provide Service and sales, use, receipts, telecommunications, excise, utility, or other similar transaction-based taxes, however designated, imposed directly on Service or upon XO as a result of its provision of Service. "Taxes" does not include any tax based on XO's net income, net worth, capital structure or payroll.

(x) **Voice Services** consist of local and long distances services, including, but not limited to, basic business lines; plain old telephone service ("POTS"); XOptions; trunk services; and ISDN-PRI service, all as set forth in the applicable XO Tariffs, or contracts. Voice Services do not include XO IP-based services such as VoIP Termination, VoIP Origination, IP Flex, SIP, and Managed IP.PBX Services.

ARTICLE 2 - PROVISION OF SERVICE/LIMITATIONS

2.1 Services and Service Exhibits. XO shall provide to City the Services City has specifically contracted for on a Service Order pursuant to this Agreement, including the applicable Service Exhibit(s), which are attached hereto and made a part hereof. The Parties may amend this Agreement to add additional Services by attaching the applicable Service Exhibit(s) and entering into additional Service Orders. If City orders Services or features not governed by existing Service Exhibits executed under this

Agreement, then those Services or features will be provided pursuant to this Agreement as supplemented by the applicable Product Terms and Conditions set forth on XO's website at <http://www.terms.xo.com>, until such time that the Parties execute the applicable Service Exhibit or otherwise amend this Agreement to address such Services or features.

2.2 Interconnected Voice over Internet Protocol ("VoIP") Services. XO does not support, via any Voice Service, Interconnected VoIP Service, as defined in 47 C.F.R. §9.3, provided by City or any third party.

2.3 911 Calling. City is responsible for ensuring that no calls to a Public Safety Answering Point ("PSAP") or other emergency answering point can be made via any Service from any location other than the particular City Premises at which the Service is being provided by XO.

2.4 Resale of Services.

(a) City is the customer-of-record for all Service(s) acquired under this Agreement. If City resells Service or incorporates Service into services it provides to its customers or to End Users, City will be solely responsible for interfacing with its customers or End Users with respect to all matters pertaining to its services including, without limitation, service provisioning, billing and collection, dispute resolution and crediting. XO will have no obligation to interact with City's customers or End Users, nor will XO incur any liability to them for its performance under this Agreement. City is responsible for the payment of all charges for Service furnished to City, its customers or End Users. This responsibility is not diminished or otherwise affected by any: (1) use, misuse, fraud or abuse by City, its employees, its customers, End Users, or other members of the public of Service or of City-provided systems, equipment, facilities or services interconnected to Service; or (2) City inability to collect payments or charges from its customers, End Users, or others. Under no circumstance will any credit be given for fraudulent calls delivered to XO by or through City.

(b) City is responsible for: (1) applying and enforcing all applicable provisions of this Agreement on its customers and End Users; and (2) any liability arising from a violation of a City's obligation under this Agreement. If XO discontinues providing Service to City for any reason, City will be solely responsible for furnishing any required notice to its affected customers or End Users.

(c) City may not: (1) market to its customers, End Users or prospective customers using XO's name; (2) represent to its customers, End Users or prospective customers that they are or will become XO's customers; or (3) indicate to its customers, End Users or prospective customers that it has any relationship with XO other than that resulting from its purchase of Service.

2.5 Access to Premises. City will provide XO, its agents or





contractors reasonable access to City and End User Premises to provision, inspect, maintain, and repair Service or retrieve any XO equipment. If the requisite access rights are not held by City, City will acquire them so that XO can perform all of these undertakings in a timely manner. XO shall not be responsible for any delays in meeting Service delivery dates requested or specified by City, or inability to provide Services due to City's failure to provide access.

2.6 Tariffed Service. This Agreement incorporates any applicable Tariff, which may be modified by XO from time to time in accordance with law and affect the Service being furnished City. Terms and conditions in this Agreement may supplement but not vary those established in a Tariff. If an applicable Tariff is cancelled during the term of this Agreement, its terms will be incorporated into and made part of this Agreement as of the effective date of cancellation.

2.7 International Service. XO may provide International Service to City pursuant to supplemental terms and conditions set forth in an International Service addendum ("International Services Addendum") incorporated into and made part of this Agreement. In the event of any express inconsistency between the terms and conditions set forth in the International Services Addendum, and the terms contained in this Agreement or in any Service Exhibit, Service Order, or other contractual document, the International Services Addendum will control.

ARTICLE 3 - BILLING AND PAYMENT

3.1 Billing. Monthly Recurring Charges ("MRC's") are billed in advance while usage-based charges are billed in arrears. If Service is made available on a day other than the first day of a monthly billing period, or if Service is discontinued on a day other than the last day of a monthly billing period, the MRC will be prorated for that monthly billing period. Billing for a Service will begin on the Start of Service Date unless City fails to permit XO to begin testing on a Service within five (5) days of the Service Request Date, in which case billing will begin on the Service Request Date.

3.2 Payment. Except as set forth in Section 3.4, City shall pay all invoiced charges for Service without deduction, setoff or delay for any reason. City agrees to pay for the Services within forty-five (45) days from the date of the invoice ("Payment Period") by either (i) check sent to the address provided for herein or on the invoice, (ii) wire transfer sent in accordance with applicable instructions provided by XO, (iii) online payment via XO's Business Center website, or (iv) other method approved by XO. Restrictive endorsements or statements on checks accepted by XO will not be binding upon XO.

3.3 Late Payments. Except for amounts disputed in good-faith in accordance with section 3.4 below, all invoiced amounts not paid within the Payment Period are subject to compounded interest at a rate equal to the lesser of 1.5% or the maximum allowed by law. Notwithstanding the foregoing, XO will permit City to make three (3) payments after the expiration of the Payment Period within a twelve

(12) month period without the imposition of interest. However, should City make four (4) or more payments after the expiration of the Payment Period then XO will impose and City will be liable for interest as described herein. In addition, Customer may be required to reimburse XO for all reasonable costs incurred in connection with collection activities, including attorneys' fees and court costs.

3.4 Billing Disputes. If City disputes a charge in good faith, it may withhold payment of that charge so long as City (a) makes timely payment of the undisputed charges; and (b) on or before the Payment Period, provides XO with written notice including an explanation of the reasons for City's dispute of the charges. The parties will cooperate to resolve any disputed charges within thirty (30) days from XO's receipt of City's notice. No charges may be disputed more than one hundred twenty (120) days after the date such charges are invoiced, and if not disputed within that time, all such charges shall be deemed valid and undisputed by City. Payment shall not prejudice City's right to dispute charges, so long as they are disputed in good faith in the manner and within the timeframes specified in this Article.

3.5 Consequences of Non-Payment. If City does not make payment of all invoiced charges in accordance with the provisions herein, XO may pursue one or more of the following remedies: (i) alter City's billing or payment arrangements (ie by requesting financial assurances such as a deposit or bond, or requiring weekly payments), or (ii) suspend any and all Service provided by XO under this Agreement or any other service agreement upon written notice to City. Following suspension of Services for non-payment, XO will not be required to reinstate Services to City until: (1) City has paid in full all charges then due, including any late fees, interest charges, collection costs and any cost of reinstating Services; and (2) City provides to XO satisfactory assurance as requested by XO (such as a deposit, bond, or requirement of weekly payments) of City's ability to pay for Service for the remainder of the applicable Service term(s). If City fails to cure the non-payment within ten (10) days from the date of Service suspension, City will be deemed to have terminated the affected Services as of the effective date of Service suspension. If City has not paid an invoice within the Payment Period and XO owes any amounts to City, XO may offset respective payments by first applying such amounts owed by XO to the full balance due from City and the remaining amounts owed by XO, if any, will be remitted in the normal course of business. A payment default that results in termination of Services shall entitle XO to collect from City any early termination charges as set forth in the applicable Service Exhibit, in addition to pursuing all other available remedies, including but not limited to reporting of City's non-payment to one or more credit reporting agencies, as permitted by law.

3.6 Customer Financial Standing.

(a) XO may at any time request information from a reporting





agency to enable XO to assess Customer's credit history and current credit standing.

3.7 Special Construction or Acquisition. Notwithstanding anything to the contrary in this Agreement, if XO is required to undertake special construction and/or acquire telecommunications facilities from a third party in order to provide Service to Customer ("Special Construction"), and the costs are not included in the Monthly Recurring Charge for the affected Service(s), then XO will advise Customer in writing of the estimated charges associated with such Special Construction prior to the undertaking of the activity by XO. If Customer cancels this Agreement or any Service Order involving Special Construction after signature but prior to the Start of Service Date, or if Customer terminates this Agreement or any Service Order prior to expiration of the committed Service term, Customer must reimburse XO for all unpaid costs and expenses XO incurred in connection with the Special Construction. This payment obligation is in addition to any other rights and remedies XO may have at law, in equity, or as provided in this Agreement. XO acknowledges with respect to Service Order 7-DO-14471301, there are no construction charges.

3.8 Monthly Minimum Commitment. During each month of the Agreement, Customer shall purchase Services from XO in an amount that shall equal or exceed four thousand six hundred fifty dollars (\$4,650) (the "Monthly Minimum"). If, at the end of each such month, Customer's purchase of Services are less than the Monthly Minimum, then Customer shall pay: (1) all accrued but unpaid Service charges and other charges incurred by Customer; and (2) a shortfall charge (which Customer hereby agrees is reasonable) equal to the difference between the Monthly Minimum and Customer's actual purchase of XO's Services (including any applicable cancellation charges), excluding taxes, tax related surcharges, and other surcharges during that month.

ARTICLE 4 - TAXES AND GOVERNMENTAL CHARGES

4.1 Applicability. Service charges do not include Taxes or Governmental Charges to be invoiced to City, as applicable, in connection with the furnishing of Service.

4.2 Payment and Other Obligations. City must pay existing and future Taxes and Governmental Charges and comply with new or revised terms and conditions imposed by XO as a result of Governmental Activity. If XO decides to impose a new or revised Governmental Charge or impose new or revised terms and conditions neither mandated by nor consistent with a Governmental Activity, XO will furnish City with at least thirty (30) days notice of the new or revised charge or terms and conditions, and City may discontinue, without any termination or other payment obligation (except for any charges owed for Service up to the time of termination or due third parties under Section 3.7), the affected Service by furnishing XO with at least thirty (30) days prior written notice of its intent to discontinue the Service.

4.3 Exemption Certificate. If City believes itself to be exempt from any Taxes or Governmental Charges, it may provide XO with a certificate demonstrating its eligibility for exemption. If the certificate is accepted, XO will cease imposing the applicable Taxes or Governmental Charges and, if such charges previously had been imposed and collected, XO will credit City in an amount equal to the charges paid by City during the ninety (90) day period immediately preceding the delivery of the accepted certificate, unless otherwise required by law or regulation.

4.4 Survival. City's obligation to pay Taxes and Governmental Charges under this Article 4 will survive the expiration or early termination of the Agreement.

ARTICLE 5 - TERM AND TERMINATION

5.1 Agreement Term and Service Term. The Agreement shall have an initial term of three (3) years, commencing on the Effective Date. Thereafter, this Agreement will automatically renew on a month to month basis at rates, terms and conditions contained in this Agreement for a period of time not to exceed six (6) months to facilitate the negotiation of a new agreement. If a new agreement, similar in term and volume, is not executed between the Parties within six (6) months of the expiration of this Agreement, XO will charge and City agrees to pay the percentage mark-up, based on the contract term length ("Monthly Rate") as follows, for Services provided after the six (6) month extension period:

Contract Term Length	Monthly Rate
1 Year Contract:	current rates plus twenty percent (20%)
2 Year Contract:	current rates plus forty percent (40%)
3 Year or greater Contract:	current rates plus sixty percent (60%)

unless one Party provides written notice to the other of its intent not to renew at least sixty (60) days prior to the end of the initial term, or thirty (30) days prior to the end of any monthly renewal term (collectively, the initial term and any renewal terms are referred to herein as the "Term"),

Customer acknowledges that the rates set forth above may be further subject to change at any time after the Initial Term. XO will provide at least thirty (30) days advance notice to Customer of any additional rate changes. Customer's continued use of the Service beyond the notice period will constitute its acceptance of the revised rates.

Each Service Order entered into by the Parties will indicate a service term for the Services ordered there under ("Service Term"). The Service Term will begin on the Start of Service Date. If a Service Term extends beyond the Term of the Agreement, such Service Order will remain in effect for the agreed upon time period subject to the terms and conditions of this Agreement. Unless one Party provides written notice to the other of its intent not to renew Service at least thirty (30) days prior to the expiration of the Service Term,



XO

Company Name: City of Beverly Hills, Inc
Master: MSA489460

the Service shall automatically renew for the same term as set forth on the Service Order pursuant to the rates, terms and conditions contained in this Agreement.

5.2 Termination.

(a) **Procedure.** If City terminates the Agreement for any reason, it must provide XO with written notice in accordance with Article 18. For discontinuation of Service, City must provide XO with written notice addressed to XO at such location as XO shall specify from time to time; and such notice must identify the affected Service(s) (e.g., the Circuit ID and its Primary and Secondary locations) and provide the Requested Due Date for discontinuation, which may not be less than thirty (30) days from the date City's notice is received by XO. A purported termination or discontinuation employing any other form of communication, or which fails to include essential information, will be ineffective, and City will remain fully obligated to XO.

ARTICLE 6 - INSURANCE

(a) XO shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of Two Million Dollars (\$2,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by XO.

(2) A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit, covering any vehicle utilized by XO in performing the Services required by this Agreement.

(3) Workers' compensation insurance as required by the State of California.

(b) XO shall require each of its sub-contractors to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) XO agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at XO's expense, the premium thereon.

(e) At all times during the term of this Agreement, XO shall maintain on file with the City Clerk a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts. XO shall, prior to commencement of work under this

Agreement, file with the City Clerk such certificate or certificates. The general and auto liability insurance shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by XO shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to the City.

ARTICLE 7 - REPRESENTATIONS AND WARRANTIES

7.1 The Parties. Each Party represents and warrants to the other Party (i) that it is an entity, duly organized, validly existing and in good standing under the laws of the place of its origin, with all requisite power and authority to enter into and perform its obligations under this Agreement in accordance with its terms, and (ii) that it has and will continue to comply with all applicable anti-corruption laws, including but not limited to, the U.S. Foreign Corrupt Practices Act ("FCPA").

7.2 XO. XO represents and warrants that: (a) its On-Net Service is designed, installed, provided, and maintained in compliance with applicable legal requirements; and (b) it possesses, and will maintain, all licenses, approvals, registrations and certifications required by regulators or other third parties to furnish its services to City.

7.3 City. City represents and warrants that: a) City's use of Service(s) is in compliance with applicable legal requirements and those established in this Agreement, and b) all City traffic handled by XO is compliant with applicable legal requirements and those established in this Agreement. Further, if City uses the Service(s) to furnish services to End Users, City represents and warrants that: a) services it furnishes to its End Users are designed, installed, provided and maintained in compliance with applicable legal requirements and those established in this Agreement; and b) it possesses, and will maintain, all licenses, approvals, registrations and certifications required by legislators or other third parties to furnish its services.

7.4 Exclusion of Other Warranties. THE WARRANTIES SET FORTH IN SECTIONS 7.1-7.3 ARE IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, NON-INTERFERENCE, AND NON-INFRINGEMENT.





ARTICLE 8 - DEFAULT

8.1 Default Events. A Party is in default under this Agreement if any of the following occurs ("Default"):

(a) a Party violates any legal requirement relating to the provision or receipt of Service, and the violation is not remedied within thirty (30) days of receipt of written notice of the violation; or

(b) a Party fails to perform a material obligation under this Agreement, and the failure is not remedied within thirty (30) days of receipt of written notice of the failure, or such other cure period as specified in a Service Exhibit (except for payment defaults for which no cure periods shall be available in addition to those described in Article 3.5 above); provided however, if City is entitled to service outage credits or other contractual remedies for non-performance of XO or the Services, then such non-performance is not a Default within the meaning of this Article.

8.2 Termination for Default. In addition to remedies available at law or in equity, the non-defaulting Party may terminate this Agreement (including its Service Exhibits and Service Orders, both implemented and pending), in whole or in part, for a Default.

ARTICLE 9 - ABUSE AND FRAUD

City will not: (1) use Services for fraudulent, unlawful or destructive purposes; including, but not limited to, unauthorized or attempted access, alteration, abuse or destruction of information; or (2) use Services in such a manner that causes interference with XO's or another's use of the XO network. City will promptly cooperate with XO to prevent unauthorized access by third parties of the Services via City's facilities.

ARTICLE 10 - INTELLECTUAL PROPERTY

If Service, by itself as provided by XO, becomes, or if XO reasonably believes it may become, the subject of a suit, proceeding or other claim by an entity (not a party to or an Affiliate of a party to this Agreement) alleging that the Service directly infringes U.S. patent, trademark or copyright rights of such entity, XO at its own expense and option will: (a) procure the right to continue to provide the Service; or (b) modify or replace the Service with a different one having substantially similar functionality; or (c) discontinue the Service and, as appropriate, refund to City a pro-rata portion of charges paid by City through the date of Service discontinuance. The foregoing sets forth the entire liability and obligations of XO, and City's sole and exclusive remedies, with respect to this Article 10.

ARTICLE 11 - CONFIDENTIAL INFORMATION

11.1 As used in this Agreement, "Confidential Information" means information not generally known to the public, and maintained by the Disclosing Party as confidential, whether of a technical, business or other nature that relates to the provisioning of Services or that, although not related to such provisioning of Services, is nevertheless disclosed as a result of the Parties' discussions in that

regard (the "Project"), and that should reasonably have been understood by the Receiving Party, because of (i) legends or other markings, (ii) the circumstances of disclosure or (iii) the nature of the information itself, to be proprietary and confidential to the Disclosing Party. Confidential Information may be disclosed in written or other tangible form (including information in computer software or held in electronic storage media) or by oral, visual or other means. For purposes of this Agreement, "Disclosing Party" includes controlled affiliates of a Party who disclose Confidential Information to the Receiving Party regarding the provisioning of Services under this Agreement. The "Receiving Party" to this Agreement is the party receiving confidential information from the Disclosing Party.

11.2 Use of Confidential Information. The Receiving Party, except as expressly provided in this Agreement, shall not disclose the Disclosing Party's Confidential Information to anyone without the Disclosing Party's prior written consent. The Receiving Party shall take all steps necessary to safeguard and protect such Confidential Information from unauthorized access, use or disclosure by or to others, including but not limited to, maintaining appropriate security measures and providing access on an as-needed basis only. The Parties will treat Confidential Information using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care. The Receiving Party shall not reverse-engineer, decompile, or disassemble any hardware or software provided or disclosed to it and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend or other notice of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party. The Receiving Party shall not use Confidential Information for any purpose other than with respect to the Project.

Notwithstanding, XO acknowledges that City is subject to the California Public Records Act (the "Act") and that some or all of the Proprietary Information (collectively "information") provided by XO may be disclosable thereunder. In the event a public records act request for XO's information is received, City shall use its best efforts to provide XO with written or verbal notice of such request, prior to compliance. However, nothing herein shall prevent City from complying with the requirements of the Act. The provisions of this section shall survive the expiration or termination of this Agreement for any reason.

11.3 Exceptions. The provisions of this Article 11 shall not apply to any information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party without confidentiality restrictions at the time of its receipt from the Disclosing Party; (iii) is rightfully received from a third Party who did not acquire or disclose such information by a wrongful or tortious act, or in breach of a confidentiality restriction; (iv) can be shown by documentation to have been independently developed by the Receiving Party without



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reference to any Confidential Information; or (v) is identified by the Disclosing Party as no longer proprietary or confidential.

11.4 Disclosures to Governmental Entities. If the Receiving Party becomes legally obligated to disclose Confidential Information, the Receiving Party shall give the Disclosing Party prompt written notice sufficient to allow the Disclosing Party to seek a protective order or other appropriate remedy, and shall, to the extent practicable, consult with Disclosing Party in an attempt to agree on the form, content, and timing of such disclosure. Notwithstanding the preceding sentence, notification to the Disclosing Party shall not be required if such notification is not permitted by law or would interfere with applicable law enforcement activities.

11.5 Export Control. The Receiving Party acknowledges that the Confidential Information governed by this Agreement is subject to U.S. export laws and regulations and that any use or transfer of the Confidential Information or products incorporating the Confidential Information must be authorized under those laws and regulations.

11.6 Remedies. The Receiving Party acknowledges that Confidential Information is unique and valuable, and that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or be an inadequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the Disclosing Party may be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.

11.7 CPNI. City Proprietary Network Information ("CPNI") is City information acquired by XO from provisioning regulated telecommunications services to City. CPNI includes, among other things, Service types, quantities and locations; information on how Service is being used; and Service billing information. Unless or until otherwise instructed by City, XO may use City CPNI or share it with its agents and independent contractors for the purpose of furnishing City with information about XO's telecommunications-related products that may be of interest to City. City's approval of this use of its CPNI will remain in effect until City contacts XO and indicates it no longer wishes to have its CPNI used for such purpose. To revoke its approval, City may contact XO at any time and at no cost by dialing 1-800-474-6579 or by locating information about contacting XO City Care at <http://www.xo.com/contact/care>.

ARTICLE 12 - INDEMNIFICATION

12.1 XO's Indemnification of City. XO agrees to indemnify, hold harmless and defend City, City Council and each member thereof, and every officer, employee and agent of City, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from or relating to damage to real or tangible personal property or personal injury (including death) arising out of

the gross negligence or intentional, misconduct of XO or any person employed by XO in the performance of this Agreement.

Notwithstanding Article 10 above, XO agrees to indemnify, hold harmless and defend the City, City Council and each member thereof, every officer, employee and agent of City, from any liability or financial loss (including, without limitation, attorneys fees and costs) arising from or related to any claim that the Services on their own and as provided by XO directly infringe upon any copyright, trade secret, trademark, patent or other proprietary or intellectual property right of any third party.

12.2 City's Indemnification of XO. City will defend and indemnify XO, its employees, directors, officers and agents, from and against any suit, proceeding or other claim brought by an entity (not a party to or an Affiliate of a party to this Agreement) that is caused by, arises from, or relates to: (a) damage to real or tangible personal property or personal injuries (including death) arising out of the gross negligence or willful act or omission of City in connection with its purchase or use of the Service; (b) City's representations regarding the nature of City's traffic; (c) any unauthorized use or resale of Service by City or its authorized representatives; (d) the placement or transmission by City or End Users of any content or through XO-provided Service; and (e) City provided designs, specifications, or modifications to the Service; or combination of the Service or components thereof with City hardware, software, or other materials or services provided by City.

12.3 Procedure. If a claim covered by this Article 12 is made against XO or City, the Party in receipt of the claim ("Indemnified Party") will notify the other Party ("Indemnifying Party") in writing no later than sixty (60) days after receipt of such notification of a potential claim. The Indemnifying Party will be entitled to assume sole control of the defense of the claim and all related settlement negotiations. The Indemnified Party will provide the assistance, information and authority reasonably necessary to assist the Indemnifying Party. A Party may not settle any such claim without the other's consent if the settlement would impose an obligation on, or require any admission by, the other Party. Failure of the Indemnified Party to provide notification of a claim will not relieve the Indemnifying Party of its obligations under this Agreement except to the extent the delay prejudices the Indemnifying Party's ability to defend or settle the claim.

12.4 Survival. The indemnification obligations set forth in this Article 12 will survive this Agreement.

ARTICLE 13 - LIMITATION OF LIABILITY

13.1 Consequential Damages. Except to the extent damages are part of a claim for which indemnification is due under Sections 12.1 and 12.2 herein, neither Party is liable to the other Party for any indirect, consequential, special, incidental, reliance, or punitive damages of any kind or nature whatsoever including, without limitation, any lost profits, lost revenues, lost savings, or any other





business loss including goodwill, loss of use of property, loss of data, cost of substitute equipment or services, downtime costs and claims for damages or harm to business, regardless of foreseeability or whether damages are caused by the willful misconduct, negligent acts or omissions, or wrongful acts arising from or related to this Agreement. A Party's out-of-pocket costs for damages of the kinds specified in the preceding sentence are indirect damages to such Party, and each Party releases the other Party and its Affiliates, as well as their respective officers, directors, managers, employees, and agents, from damages from such claim(s).

13.2 Service Credits and Liability Limits. Customer's sole remedy for Service failure, installation delays, or XO's inability to provide Service is the right to receive credits or other remedies as set forth in this Agreement and the Service Exhibits hereto. **XO'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR CLAIMS ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT IS LIMITED TO THE LESSER OF I) DIRECT DAMAGES ACTUALLY INCURRED BY CUSTOMER OR II) THE TOTAL AMOUNT PAID BY CUSTOMER TO XO FOR SERVICE DURING THE PREVIOUS THREE (3) MONTHS IMMEDIATELY PRECEDING A CLAIM.**

13.3 The foregoing limitations apply to all causes of action and claims of any kind, including, without limitation, breach of contract, breach of warranty, strict liability, negligence, misrepresentation, or any other tort.

ARTICLE 14 - CITY TRAFFIC CHARACTERISTICS

14.1 Local Voice Traffic. All traffic delivered by or through City to XO for local termination, and all traffic delivered by XO to or through City that originates in the same local calling area in which City's NPA-NXX is assigned or in which the traffic terminates either must be local traffic or traffic legally entitled to be treated as local under applicable legal or regulatory requirements. Based on this presumption, XO will assign local telephone numbers to City or route City's traffic for termination as local calling.

14.2 Access Charges and ANI/CPN. City must timely pay all switched access and other applicable charges associated with City traffic delivered pursuant to this Agreement, and City will not alter or remove, or allow others to alter or remove, Automatic Number Identification ("ANI") or Calling Party Number ("CPN") information associated with delivered traffic. City will cooperate with XO to obtain or verify any necessary regulatory certifications or other information regarding the nature of its traffic or its use of Service.

14.3 Third Party Charges. City promptly will pay XO access charges, reciprocal compensation, or other charges invoiced to XO by a third party, or remitted by XO to a third party, as a result of City's traffic (collectively, "Additional Charges"), which Charges are not already reflected in the Service charges imposed on City. If XO successfully challenges any Additional Charges imposed by a third party, it will credit City any amounts previously paid by City for those

Charges. And, if XO imposes a price increase on City resulting from Additional Charges, City may transition the affected Service to another service provider without incurring termination liability so long as it: (a) furnishes written notice to XO of its intent to do so within two (2) monthly billing cycles; and (b) completes the transition within a period of time not to exceed sixty (60) days from the date of its notice. If City does not timely serve notice on XO of its intent to transition Service to another carrier, it will be deemed to have waived its right to do so. The Parties will cooperate and coordinate on transition scheduling and implementation.

14.4 Third Party Audit. If XO is subjected to a third-party audit relating to City's traffic, City will co-operate with XO in connection with the audit, including allowing XO to furnish City traffic information to the third party upon reasonable demand, unless prohibited by law.

ARTICLE 15 - FORCE MAJEURE

In no event shall a Party have any claim or right against the other Party for any failure of performance due to causes beyond its control, including but not limited to: acts of God, fire, explosion, vandalism, cable or fiber cuts, labor difficulties, supplier failures, shortages, or any other cause or circumstance, whether of a similar or dissimilar nature to the foregoing, beyond the reasonable control of the affected Party.

ARTICLE 16 - INTENTIONALLY DELETED

ARTICLE 17 - ASSIGNMENT

17.1 Assignability. City may not assign this Agreement without the prior written consent of XO, which consent will not be unreasonably withheld, provided the following conditions are met: (a) assignee agrees in writing to assume all responsibilities and obligations under this Agreement; (b) assignee must be at least as creditworthy as City (as determined by XO in its reasonable discretion); (c) City must deliver to XO documents executed by City and assignee that are acceptable to XO establishing the terms of the assignment; and (d) City's account is current (i.e., no balance older than thirty (30) days) at the time of the assignment. City shall remain responsible for all charges incurred prior to the effective date of the assignment.

17.2 Prior Agreement. If this Agreement is assigned by City to any other party, by assignment, operation of law or otherwise, which Party, prior to the assignment, has an agreement (the "Prior Agreement") with XO or any of its Affiliates for the provision of services, the services being provided shall continue to be governed by the Prior Agreement, and the Services provided hereunder shall continue to be governed by this Agreement, each without reference to the other.

ARTICLE 18 - NOTICES

Notices under this Agreement shall be in writing and delivered by overnight courier (e.g., Federal Express, DHL) or certified mail, return receipt requested, to the persons whose names and business



XO

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addresses appear below and such notice shall be effective on the date of receipt by the receiving Party:

If to XO: XO Communications Services, Inc.
13865 Sunrise Valley Drive
Herndon, VA 20171
Attn: President, Business Services

With copy to: XO Communications Services, Inc.
13865 Sunrise Valley Drive
Herndon, VA 20171
Attn: Senior Vice President and General Counsel

If to City: City of Beverly Hills, Inc
455 North Rexford Drive
Beverly Hills, California
United States
90210
ATTN: Chief Information Officer

With copy to: Same address
ATTN: City Attorney

A Party may change its address and point of contact by notifying the other Party in accordance with this Article.

ARTICLE 19 - MISCELLANEOUS

19.1 Interpretation. This Agreement may not be construed or interpreted against either City or XO because that Party drafted, or caused its legal representative to draft, any of its provisions.

19.2 Order of Precedence. In the event of any express inconsistency, between the main body of this Agreement and any applicable Tariffs, Service Exhibits or Service Orders, precedence shall be given, from the most to the least controlling, to:

- (1) Any applicable Tariff;
- (2) The main body of this Agreement;
- (3) Applicable Service Exhibit(s); and
- (4) Any Service Order(s).

19.3 XO Facilities, Equipment and Software. XO's facilities, including equipment and software used to provide Service shall remain the sole and exclusive property of XO or its assignee, and nothing contained herein shall give or convey to City any right, title or interest whatsoever in such facilities, equipment or software, which shall at all times be and remain personal property notwithstanding that it may be or become attached to or embedded in realty. City shall not tamper with, remove or conceal any identifying plates, tags or labels affixed to the equipment showing XO's ownership thereof. XO may substitute, change or rearrange telecommunications equipment used in providing Service as long as the quality is not impaired.

19.4 Agency; Partnership; and Third Parties. This Agreement does not render either Party the agent or legal representative of the other Party and does not create a partnership or joint venture between the Parties. Neither Party shall have any authority to agree for or bind the other Party in any manner whatsoever. This Agreement confers no rights of any kind upon any third party, including without limitation, City's End Users.

19.5 Waiver. No waiver of any of the provisions of this Agreement shall be binding unless it is in writing and signed by both Parties. The failure of either Party to insist on the strict enforcement of any provision of this Agreement shall not constitute a waiver of any provision and all terms shall remain in full force and effect.

19.6 Subsequent Agreement. No subsequent agreement among the Parties concerning the Service shall be effective or binding unless it is made in writing and executed by authorized representatives of the Parties. Neither e-mail nor instant messaging (IM) shall be considered a "writing" sufficient to change, modify, extend or otherwise affect the terms of the Agreement.

19.7 Entire Agreement. This Agreement, together with any applicable Tariffs, sets forth the entire understanding of the Parties and supersedes any and all prior or contemporaneous agreements, arrangements or understandings relating to the subject matter hereof, written, oral or otherwise. The Service Exhibits and other documents referred to herein are integral parts hereof and are hereby made a part of this Agreement.

19.8 Severability. If any provision of this Agreement is found to be invalid or unenforceable under applicable law, it will be ineffective only to the extent of such invalidity and will not affect the remaining provisions of this Agreement.

19.9 Applicable Law and Venue. This Agreement will be governed by the laws of the State of California.

19.10 Non-Exclusivity. This Agreement is non-exclusive. Nothing in this Agreement shall prevent City or XO from entering into similar arrangements with, or otherwise providing Services to, any other person or entity.

19.11 Publicity. Neither Party shall issue a news release, public announcement, advertisement, or other form of publicity concerning the existence of this Agreement or the supplies or Services to be provided hereunder without obtaining the prior written approval of the other Party; except that XO reserves the right to issue a public announcement and/or press release regarding the existence of this Agreement and the provision of Service(s) by XO to City hereunder within six (6) months after the Effective Date of this Agreement. The content of such announcement and/or release shall be subject to City's prior review and written approval. Any request by City for such consent from XO shall be directed to XO's Legal and Corporate Communications Departments.

19.12 Survival. The terms of this Agreement which, by their usage



XO

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and context, are intended to survive this Agreement including, without limitation, the obligation to make payments for Service, will survive its expiration or termination.

19.13 Headings. The Article and Section headings in this Agreement, including all its incorporated documents, are for convenience only and may not be considered in interpreting the provisions in which they appear.

19.14 Revocation of Agreement Offer. This Agreement shall be of no force and effect and the offer reflected herein shall be withdrawn, unless this Agreement is executed by Customer and delivered to XO on or before December 31, 2010.



XO

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

City of Beverly Hills, Inc

XO Communications Services, Inc.

BY: _____
AUTHORIZED SIGNATURE DATE

BY: [Signature] 2/2/11
AUTHORIZED SIGNATURE DATE

JIMMY DELSHAD
PRINT NAME

Mark Harris
PRINT NAME

MAYOR OF THE CITY OF BEVERLY HILLS
PRINT TITLE

General Manager - LA
PRINT TITLE

BY: _____
AUTHORIZED SIGNATURE DATE

XO Sales Contact: Dennis Simms

JEFFREY KOLIN
PRINT NAME

ATTEST:

CITY MANAGER
PRINT TITLE

(SEAL)

BYRON POPE
City Clerk

BY: [Signature] _____
AUTHORIZED SIGNATURE DATE

DAVID SCHIRMER
PRINT NAME

CIO
PRINT TITLE

BY: [Signature] 2/14/11
AUTHORIZED SIGNATURE DATE

KARL KIRKMAN
PRINT NAME

RISK MANAGER
PRINT TITLE

APPROVED AS TO FORM:

[Signature]
City Attorney



XO

**EXHIBIT A
MASTER SERVICES AGREEMENT
DEDICATED TRANSPORT SERVICES**

This Exhibit A applies to XO's provision and Customer's use of the DEDICATED TRANSPORT SERVICES and is hereby incorporated into and made part of that certain Agreement # MSA487141 referenced above.

1.0 Description of Services

XO Dedicated Transport Services include dedicated, high capacity connections between two or more sites, including Commercial Metro and Intercity Private Line, Wavelength Service, and SONET service. Each service is further described in additional Schedules, attached hereto and incorporated herein as applicable:

Check all that apply:

- Schedule 1: Commercial Private Line Service
- Schedule 2: Wavelength Service
- Schedule 3: Ethernet Service
- Schedule 4: SONET Service

1.1 Definitions. For purposes of this Dedicated Transport Service Exhibit, the following terms shall have the meanings set forth below:

1.1.1 DS-1 Service. DS-1 Service is a dedicated, high capacity, full duplex channel with a line speed of 1.544 Mbps isochronous serial data having a line signal format of either Alternate Mark Inversion ("AMI") or Binary 8 Zero Substitution ("B8ZS") and either Superframe ("D4") or Extended Superframe formats. DS-1 Service has the equivalent capacity of twenty-four (24) Voice Grade ("VG") services or twenty-four (24) DS-0 services. AMI can support twenty-four (24) individual 56 Kbps channels and B8ZS can support twenty-four (24) individual 64 Kbps channels.

1.1.2 DS-3 Service. DS-3 Service is a dedicated, high capacity, full duplex channel with a line speed of 44.736 Mbps isochronous serial data having a line code of binary with three zero substitution ("B3ZS"). DS-3 Service has the equivalent capacity of twenty-eight (28) DS-1 Services at 1.544 Mbps or 672 VG services or 672 DS-0 Services at 56/64 Kbps.

1.1.3 OCN Service.

OC-3 Optical Carrier level 3. A SONET circuit equal to three (3) STS1's, equal to 155.52 Mbps (STS-3 equivalent).

OC-12 Optical Carrier level 12. A channel of 622.08 Mbps (STS-12 equivalent).

OC-48 Optical Carrier level 48. A channel of 2.488 Gbps (STS-48 equivalent).

1.1.4 Intercity Service. Intercity Service refers to the connection between two XO POPs XOXO in different LATAs. Intercity services are provided between two LATAs only, i.e., they are InterLATA services.

1.1.5 Local Loop Service. A Local Loop refers to the connection from the End User location to the XO POP within a LATA.

2. INTERFACE REQUIREMENTS

2.1 DS-3 Interface Requirements. The interface at Network Interface and Customer Interface will be at DSX-3 cross connect located in the Customer DSX-3 environment and be of the type equaling the current Customer standard.

2.2 DS-1 Interface Requirements. The interface at Network Interface and Customer Interface will be at DSX-1 cross connect. The signal format shall be B8ZS. AMI shall be provided as an option. The frame format shall be that of the Extended Superframe ("ESF"). Super Frame ("SF") frame format shall be provided as an option.

2.3 OCN Interface Requirements. The interface at Network Interface and Customer Interface will be at the fiber distribution panel located in the Customer Optical environment and be of the type equaling the current Customer standard.

2.4 Ethernet Interface Requirements

2.4.1 10 Mbps Interface Requirements. The interface at Network Interface and Customer Interface will be an IEEE 10BaseT port connection on the Service Provider transport CPE.

2.4.2 100 Mbps Interface Requirements. The interface at Network Interface and Customer Interface will be an IEEE 100BaseTX port connection on the Service Provider transport CPE.

2.4.3 1000 Mbps Interface Requirements. The interface at Network Interface and Customer Interface will be an IEEE 1000BaseSX/LX port connection on the Service Provider transport CPE.

2.4.4 Unprotected Ethernet Service Standard Features. The XO Unprotected Ethernet Service product will support Ethernet access ports of the following types:

- 100BASE-TX
- 1000BASE-SX/LX
- full/half-duplex 100 Mbps Ethernet over Category 5
- Copper Twisted Pair

3. CANCELLATION CHARGES.

3.1 Cancellation Charges. Cancellation charges are applicable when a Customer cancels a Circuit prior to the Start of Service Date.





Subject to Section 3.7 of the Agreement ("Special Construction or Acquisition"), there will be no cancellation charge if a Circuit is cancelled within ten (10) days of Customer's Circuit order. If a Circuit is cancelled after the ten (10) day cancellation period set forth above but prior to the Start of Service Date, Customer shall pay one month's recurring charges, plus any applicable service ordering and installation charges including without limitation those provided for in Section 3.7 of the Agreement. If Customer places an order for a Circuit, cancels within the 10 day grace period provided above, and later places an order for the same locations, Customer may be charged a cancellation charge. It is agreed that XO's damages in the event of Service cancellation shall be difficult or impossible to ascertain. This provision is intended, therefore, to establish liquidated damages in the event of cancellation and is not intended as a penalty.

4. PROVISIONING OF SERVICE

XO shall provide Dedicated Transport Service to Customer, in accordance with the following procedures:

4.1 Service to On-Net Locations

(a) Customer shall order Dedicated Transport Service from XO by transmitting a completed Access Service Request (ASR) to XO either electronically, if an electronic format is available for such ASR transmittals, or via facsimile or email where electronic format is not available. If an electronic format is utilized, XO will follow applicable Alliance for Telecommunications Industry Solutions (ATIS) Ordering and Billing Forum (OBF) standards for use thereof. Facsimile and email contact information will be provided to Customer and updated as needed. If XO accepts the ASR, each such ASR shall form part of the Agreement, subject to all terms and conditions herein.

(b) Dedicated Transport Service to On-Net locations shall include normal maintenance, inspection, repair and testing as provided herein.

(c) Service Order Intervals

ASR Issuance - Upon receipt of an ASR from the Customer, XO will use commercially reasonable efforts to provide a response to Customer pertaining to any corrections or clarifications required to process the ASR within twenty-four (24) business hours following the receipt of the ASR.

On-Net Firm Order Commitment (FOC) and Design Layout Record (DLR) - XO will use commercially reasonable efforts to provide a FOC date and DLR information to Customer for On-Net Circuits as follows:

On-Net Circuit Type	Number of Business Days From Receipt of Complete and Accurate ASR from Customer
DS1	Five (5) business days
DS3	Five (5) business days
OCN (OC-3, OC-12 and OC-48)	Fifteen (15) business days

DS1	Five (5) business days
DS3	Five (5) business days
OCN (OC-3, OC-12 and OC-48)	Fifteen (15) business days

The FOC will provide any necessary service intervals. Customer may request that XO expedite an order. Terms and conditions applicable to expedited orders, if any, will be agreed on an ICB.

(d) The charges set forth in the Service Order for On-Net Dedicated Transport Services assume that such Services are being terminated at a minimum point of entry (MPOE) in the building in which Customer premises are located, as determined by XO in its sole discretion. XO will charge Customer a one-time fee for standard extensions beyond the MPOE as described above at the following rates: \$200.00 (DS1) and \$500.00 (DS3). In addition, XO may charge Customer additional non-recurring charges and/or monthly recurring charges not otherwise set forth in the Service Order for such XO Dedicated Transport Service where it is determined that it is necessary to extend the demarcation point or MPOE through the provision of additional infrastructure, cabling, electronics or other materials necessary to reach the Customer premises. XO will notify Customer of any additional non-recurring charges and/or monthly recurring charges as soon as practicable. Standard installation does not include core drilling, wiring extensions for excessive distances, installation of new conduit, installation of water proof shielding, installation of aerial circuit runs, or removal of hazardous materials, as determined by XO at its sole discretion.

4.2 Service to Off-Net Locations

(a) Customer will submit to XO a Request For Quotation ("RFQ") specifying the Service requested, quantity of Circuits, the location to be served, the Point of Termination, the requested Start of Service Date, the Circuit term, and other information specific to the applicable RFQ.

(b) At XO's discretion, XO will respond by providing a XO written quotation specifying: (a) the type of Service; (b) quantity of Circuits; (c) location to be served; (d) Point of Termination; (e) the Start of Service Date; (f) the applicable non-recurring charge; (g) the applicable monthly recurring charge; and (h) the Circuit term.

(c) If XO provides a quotation, Customer may order the applicable Service from XO by tendering to XO an ASR with a copy of XO's written quotation attached. Upon acceptance of the ASR by XO, such ASR shall form a part of the Agreement, subject to all terms and conditions contained therein.

(d) In the event the ASR is inconsistent with any of the terms of XO's written quotation under Subparagraph (b) above, then the terms stated in XO's written quotation shall govern.

(e) While XO will act as Customer's single point of contact for Off-



XO

Net Services, Off-Net Services terms and conditions, including without limitation ordering and installation intervals, FOC, and DLR will be determined on an ICB dependent upon the standard intervals from the local exchange carriers or other local access providers (collectively, a "LEC") for a particular city.

(f) Off-Net Firm Order Commitment (FOC) and Design Layout Record (DLR) - XO will use commercially reasonable efforts to provide a FOC and DLR information to Customer for Off-Net Dedicated Transport Services within fifteen (15) days of receipt of a complete and accurate ASR. The FOC will provide any necessary service intervals.

(g) In the event XO Dedicated Transport Services are being terminated Off-Net at the Customer premises through an Off-Net Local Loop to be provisioned by XO on behalf of Customer, the charges set forth in the Customer order for such Off-Net Dedicated Transport Service assumes that such Off-Net Dedicated Transport Service will be terminated at a pre-established demarcation point or MPOE in the building in which the Customer premises are located, as determined by the local access provider. XO will charge the Customer a one time fee for standard extensions beyond the MPOE as described above at the following rates: \$275.00 (DS1) and \$550.00 (DS3). In addition, XO may charge Customer additional non-recurring charges and/or monthly recurring charges not otherwise set forth in the Customer order for such Off-Net Dedicated Transport Service where the local access provider determines that it is necessary to extend the demarcation point or MPOE through the provision of additional infrastructure, cabling, electronics or other materials necessary to reach the Customer premises. XO will notify Customer of any additional non-recurring charges and/or monthly recurring charges as soon as practicable after XO is notified by the local access provider of the amount of such charges. Standard installation does not include core drilling, wiring extensions for excessive distances, installation of new conduit, installation of water proof shielding, installation of aerial circuit runs, or removal of hazardous materials, as determined by XO at its sole discretion.

4.3 Jurisdictional Nature of Traffic

Service will be deemed to be "interstate" for regulatory purposes, unless Customer: (1) expressly indicates otherwise in its Service Order; and (2) warrants and represents thereby that no more than ten percent (10%) of its Service traffic will be originating or terminating outside the state in which Service is provided.

5. INSTALLATION INTERVALS FOR DEDICATED TRANSPORT SERVICES

5.1 Installation Intervals for On-Net Dedicated Transport Services. The standard installation interval for On-Net Dedicated Transport Services is as follows:

On-Net Circuit Type	Number of Business Days From Customer's Receipt of
---------------------	--

	FOC Date and DLR from XO
DS1	Thirty five (35) business days
DS3	Forty five (45) business days
OCN (OC-3, OC-12 and OC-48)	Fifty five (55) business days

The above installation intervals apply only to those Circuits for which no new equipment or special construction is required.

If a shorter installation interval is requested by Customer, XO will make reasonable efforts to meet the expected Start of Service Date. Additional charges may apply in order to achieve such shorter interval.

5.2 Installation Delay Credits. If On-Net Dedicated Transport Service is ordered with an agreed upon Start of Service Date and the due date is missed due to the sole fault of XO by more than twenty-four (24) hours, the Customer will be entitled to a delay credit in an amount equal to five percent (5%) of the non-recurring charge ("NRC") for that Circuit for each business day of delay. Delay credits for any individual Circuit will be capped at fifty percent (50%) of the NRC for that Circuit or \$5,000.00, whichever is less. To the extent that all or any part of the Dedicated Transport Services is delayed upon installation, Customer's sole remedy shall be that which is set forth hereunder. Delay credits do not apply in those instances where installation is delayed by or at the request of the Customer. If the agreed upon Start of Service Date is projected to be missed due to the sole fault of the Customer by more than twenty-four (24) hours, the Customer must supplement its requested service due date five (5) days prior to the originally requested Start of Service Date. If Customer neglects to supplement its requested service due date as set forth herein, XO will begin billing Dedicated Transport Services from the originally agreed upon Start of Service Date. To be eligible for an installation delay credit, Customer must submit a request to XO for the credit in writing with reference to the applicable Trouble Ticket Number.

5.3 Installation Intervals for Off-Net Dedicated Transport Services. The standard installation interval for Off-Net Dedicated Transport Services may vary by several factors, including but not limited to LEC, type of Service or option requested, level of demand at the time of Customer's order, and regional location. In the event Customer requests an interval that is shorter than the standard interval for that Service and XO consents to the expedited date, an expedite charge of \$675 (DS1), \$750 (DS3), or ICB (OCN) may apply per order. In addition, Customer will also be responsible for all associated expedite charges imposed on XO by any such third party provider for processing Customer's Off-Net circuit order.

5.4 Service Order Change Charge for Off-Net Dedicated Transport Service. If Off-Net Dedicated Transport Service is

XO

ordered with an agreed upon Start of Service Date and the due date is missed due to a requested change in the Service Order by Customer, Customer shall pay to XO an associated charge for such a delay in installation based upon several factors, including but not limited to LEC, type of Service, or option requested.

required on XO's Network, on XO or Customer/End User Premises, shall be performed by XO or its designated contractor(s) at no additional cost to Customer only if the failure is due to the failure of facilities or employees of XO.

6. SYSTEM ACCEPTANCE CRITERIA

6.1 End-to-End System Performance. The following acceptance tests will be conducted:

DS-1: DS-1 testing shall run for a sixty (60) minute period mutually agreed upon by the Parties. Customer shall review test results and shall notify XO in writing of its acceptance. Customer shall accept a Dedicated Transport Circuit when it is error-free over the test period.

XO shall perform all trouble maintenance and repair functions on its system and facilities from the End User Premises to the demarcation point at the Customer facilities twenty-four (24) hours per day, seven (7) days per week. XO scheduled maintenance will be performed during specified Customer maintenance windows, except in the case of emergencies, in which case as much notice as is practicable under the circumstances will be given to Customer. Customer must be prepared to provide a maintenance window upon seventy-two (72) hours notice from XO.

DS-3: DS-3 testing shall be clear channel, head-to-head cooperative testing. DS-3 testing shall run for a sixty (60) minute period mutually agreed upon by the Parties. Customer shall review test results and shall notify XO of its acceptance. Customer shall accept a Dedicated Transport Circuit when it is error-free over the test period.

8.1 Specifications. Maintenance and repair of the system will be performed so as to meet the manufacturer's specification and other specifications as set forth herein. Any maintenance or repair function performed by XO on the system which will or could affect Dedicated Transport Service provided to Customer End Users will be coordinated and scheduled with Customer surveillance system operations as is practical and feasible for XO. Customer shall provide and update a list of Customer contacts for maintenance and escalation purposes.

OCN: OCN testing shall be head-to-head cooperative testing or equivalent (i.e., Loop back.). OCN testing shall run for a sixty (60) minute period mutually agreed upon by the Parties. Customer shall review test results and shall notify XO of its acceptance. Customer shall accept a Dedicated Transport Circuit when it is error-free over the test period.

8.2 Response and Repair Times. Except as provided in Article 12 of the Agreement, in the event of a Service Outage, XO will respond within thirty (30) minutes after receiving notification of the Service Outage from Customer and a Trouble Ticket is opened. After receiving notification of the Service Outage from Customer, XO shall begin work to restore the Dedicated Transport Service on its failed system. Mean Time to Repair ("MTTR") is the time it takes to fix a problem and close out the associated Trouble Ticket. Trouble Ticket(s) kept open at the Customer's request shall not be included in this calculation. XO's MTTR objective is a yearly average of two (2) hours per occurrence, with no single occurrence lasting greater than four (4) hours. XO shall maintain a twenty-four (24) hours a day, seven (7) days a week point-of-contact for Customer to report system Troubles and open a Trouble Ticket.

Below are the general performance objectives for the Bit Error Rate:

Signal Type	Maximum Bit Error Rate
DS-1	1 x 10E-8
DS-3	1 x 10E-9
OC-3	1 x 10E-10
OC-12	1 x 10E-10
OC-48	1 x 10E-12

8.3 Maintenance Spares. XO will provide all maintenance spares. In general, Customer need not provide equipment storage space in Customer facilities over and above storage space available in XO's equipment racks.

7. EQUIPMENT AND INSTALLATION FOR ON-NET SERVICES

7.1 XO shall provide, install, maintain, repair, operate and control the telecommunications equipment necessary for On-Net Dedicated Transport Service to the Point of Termination. Except as otherwise provided herein, XO shall pay the cost of purchasing and installing all such telecommunications equipment necessary for On-Net Dedicated Transport Service. XO shall be responsible for the procurement and maintenance of all rights-of-way and private or public easements or licenses required for the installation of XO's equipment.

8.4 Scheduled Maintenance. Scheduled routine maintenance will be performed during specified Customer maintenance windows and will be coordinated between XO and Customer.

8. MAINTENANCE AND REPAIR OF ON-NET DEDICATED TRANSPORT SERVICES

Except as provided in Section 7 above, any maintenance and repair

Maintenance which may place the system in jeopardy or require system down time will normally be performed during the "Maintenance Window" during a time mutually agreed to by Customer and XO. Jeopardy and down time must be requested from the Customer surveillance system operations, up to seventy-two (72) hours prior to the requested maintenance time unless otherwise agreed to by Customer.





**SCHEDULE 3 TO DEDICATED TRANSPORT SERVICE EXHIBIT
ETHERNET SERVICES**

1. SERVICE DESCRIPTIONS FOR ON-NET ETHERNET SERVICES

1.1 Protected Ethernet Services. Protected Ethernet Service provides an Ethernet frame forwarding service between two (2) or more locations, i.e., ports, on a single XO metropolitan fiber network. The Customer manages an extended network as one (1) large Ethernet Metropolitan Area Network ("MAN") using standard IEEE connections. No customer-owned CPE is required for transport. The demarcation is the Customer facing site LAN interface on XO's transport equipment. Support for IEEE 802.1Q VLANs and IEEE 802.1D (Spanning Tree Protocol) is provided. Protected Ethernet Services are only provided On-Net. Protected Ethernet Service is available in speeds of 10 Mbps (Ethernet), 100 Mbps (Fast Ethernet), and 1,000 Mbps (Gigabit Ethernet).

1.2 Unprotected Ethernet Services. Unprotected Ethernet Services are point-to-point services in both 100 Mbps and 1000 Mbps offerings within a single metropolitan area. This Service is provided as a standalone metro point-to-point service or to terminate Intercity Ethernet Services. For Unprotected Ethernet Services, the transport will not be protected and Customer may experience service interruptions. Unprotected Ethernet Services are not available in all XO markets.

1.3 Fibre Channel and ESCON Support Services. Fibre Channel is a standards-based networking architecture that provides definitions for physical-layer attributes, transport controls and upper level interfaces to TCP/IP, SCSI-3, HiPPI ("High Performance Parallel Interface") and other protocols. Fibre Channel is a gigabit transport with current implementations at 1.0625 gigabaud. ESCON provides bi-directional serial bit transmission, in which the communication protocol is implemented through sequences of special characters and through formatted frames of characters. The transmission medium for the ESCON I/O interface is a fiber optic cable. It consists of a pair of optical fibers that provide two (2) dedicated, unidirectional, serial bit transmission lines. There are no parallel transmissions or "tag" lines. Information in a single optical fiber flows, bit by bit, always in the same direction. Fibre Channel and ESCON Support Services are additional features supported by the Dense Wave Division Multiplexing ("DWDM") transport platforms or similar system, which also serve the 1000 Mbps Gigabit Ethernet Services offering. Fibre Channel and ESCON Support Services operate in a metropolitan area at 1 Gbps and 200 Mbps, respectively.

1.4 Service Provisioning Via Copper Facilities. If XO, in its sole discretion, decides to provide Service via copper facilities acquired from a serving Local Exchange Carrier and subsequently ascertains that said facilities are unavailable for use, XO may cancel the affected Service Order without liability and without any further obligation to Customer.

2. PRICING

Ethernet Services will be priced on an ICB.

3. SERVICE AVAILABILITY OBJECTIVES

3.1 Protected Ethernet Services and Fibre Channel and ESCON Support Services. The Service Level objectives set forth in this Section 3.1 are applicable only to protected Ethernet Services, including Fibre Channel and ESCON Support. For purposes of this Section, protected Ethernet Services shall mean that each Circuit is terminated with two (2) paths, e.g., in the case of fiber, there would be two (2) fiber strands.

- Availability Objective Per Annum: 99.999%
- Latency within a Metropolitan Area: <2 milliseconds port-to-port
- Bandwidth Guarantee:

XO guarantees, for periods when the Ethernet Service is available, that full port-to-port Circuit bandwidth is available for the Customer's use at all times.

3.2 Unprotected Ethernet Services. The Service Level objectives set forth in this Section 3.2 are applicable only to unprotected Ethernet Services.

- Availability Objective per Annum: 99.99%
- Latency within a Metropolitan Area: <2 milliseconds port-to-port





Bandwidth Guarantee:

XO guarantees, for periods when the Ethernet Service is available, that full duplex port-to-port Circuit bandwidth is available for the Customer's use at all times.

4. CREDIT ALLOWANCES FOR SERVICE OUTAGES FOR ETHERNET SERVICES

4.1 Ethernet Services and Fiber Channel and ESCON Support Services. In the event that XO is unable to restore a portion of the protected Ethernet Service, including Fiber Channel and ESCON Support services, as required hereunder, or in the event of a Service Outage, Customer shall be entitled to a credit for the prorated monthly recurring charges for the affected Circuits for all unplanned outages as set forth below. Credit allowances, if any, shall be deducted from the charges payable by Customer hereunder and shall be expressly indicated on a subsequent bill to Customer. A Service Outage begins when XO is notified or becomes aware of the failure, whichever occurs first. A Service Outage ends when the affected line and/or associated station equipment is fully operative, subtracting any delay time associated with XO's inability to access the Customer or End User Premise. If the Customer reports Ethernet Services or a facility or Circuit to be inoperative but declines to release it for testing and repair, it is considered to be impaired, but shall not be deemed a Service Outage.

(a) Credit Allowances do not apply to Service Outages (i) caused by the negligence or acts of Customer and/or End User or its agents, (ii) due to failure of power; (iii) the failure or malfunction of non-XO equipment or systems; (iv) circumstances or causes beyond the control of XO or its agents; (v) during any period in which XO is not given access to the Service Premises; or (vi) a Planned Service Outage, unscheduled Emergency Maintenance, scheduled maintenance, alteration or implementation as described herein.

(b) Customer must request a credit allowance for a Service Outage within five (5) business days after the Service Outage occurs or any claim for an allowance is waived. Unless otherwise specifically stated, Service Outages are not aggregated for purposes of determining the credit allowance.

(c) Service Outages for Protected Ethernet Services of twenty-four (24) hours or less:

<u>Service Outage Length</u>	<u>Credit Per Circuit</u>
5 minutes or less	None
Between 5 minutes and 1 hour(s)	2% of MRC of the Circuit.
Each hour above 1 hour(s)	an additional 5% of the MRC of the Circuit, capped at 100% of the MRC for any single Service Outage.

(d) Service Outages for Unprotected Ethernet Services of twenty-four (24) hours or less:

<u>Service Outage Length</u>	<u>Credit Per Circuit</u>
5 minutes or less	None
Between 5 minutes and 1 hour(s)	2% of MRC of the Circuit.
Each hour above 1 hour(s)	an additional 5% of the MRC of the Circuit, capped at 75% of the MRC for any single Service Outage.

All Service Outage Credits are capped at 100% of the MRC for all Service Outages to that same Circuit in any month.

4.2 A Protected Ethernet Service is considered to have Chronic Trouble if it experiences four (4) or more related Service Outages occurring over any fourteen (14) consecutive day period. The Customer shall have the option to either (a) obtain Service Outage credits as set forth above or (b) terminate the affected Circuit provided under this Agreement without liability upon written notice to XO. In addition, in the event that a Circuit continues to experience Chronic Trouble within a thirty (30) day period after clearing the most recent Chronic Trouble for the same Circuit, the Customer may disconnect the specific Circuit without incurring termination liability. Whenever a Customer reports to XO (or vice versa) that a Circuit has a Chronic Trouble, XO shall immediately perform a detailed investigation and report the findings to the Customer. Customer's credit and termination rights as set forth herein shall not apply, however, in the event that any Trouble is caused or contributed to, directly or indirectly, by any act or omission of Customer and/or End User, affiliates, agents or representatives.

4.3 An Unprotected Ethernet Service is considered to have Chronic Trouble in the event that XO is unable to restore a portion of the



XO

Company Name: City of Beverly Hills, Inc

Master: MSA487141

Exhibit: DED487141-001

Unprotected Ethernet Service on three (3) or more separate occasions of more than twelve (12) hours each or for more than forty two (42) cumulative hours in any given calendar month.





**EXHIBIT D
MASTER SERVICES AGREEMENT
DEDICATED INTERNET ACCESS SERVICE**

This Exhibit D applies to XO's provision and Customer's use of the DEDICATED INTERNET ACCESS SERVICE and is hereby incorporated into and made part of that certain Agreement # MSA487141 referenced above.

1.0 DESCRIPTION OF SERVICE

1.1 Dedicated Internet Access. XO's Dedicated Internet Access ("DIA") Service includes T1, DS-3, Ethernet, Fast Ethernet, Gigabit Ethernet, OC-3, and OC-12 speeds. The Service provides Internet access to the Customer via either a cross-connect or a local loop from the Customer router to a port on an XO access router. Where access is provided via a local loop, the local loop is provided by XO between the XO router and the Customer's router. DIA Service may involve special routing requests by the Customer or XO. If a Customer's router is to be located in an XO collocation facility, Service will be provided via a cross-connect and will be available to the Customer under the terms of the applicable XO Collocation License Agreement.

1.2 CPE & Maintenance. XO DIA Service must terminate into an XO-approved Customer Premises router. Customer Premises routers ("CPE") are required for the Customer to exchange traffic with the XO Network and may be leased from XO or provided by Customer. XO will maintain, manage, and support all CPE leased to Customer by XO, including all associated router configurations and operational usernames and passwords. Customer agrees to allow XO unrestricted access to XO-leased CPE for purposes of testing, upgrading, and other maintenance activities. Customer must provide continuous electrical service to such CPE as required to fulfill the terms of this Agreement. XO will not be responsible, however, for management of XO-leased CPE if Customer has modified the CPE, including any changes in router configuration. Customers who choose to provide their own routers, will be solely responsible for all router maintenance, management, and support.

1.3 Required Equipment. If Customer provides its own CPE, Customer, at its own expense, must provide at least the following equipment and materials; (a) a router compatible with XO Service and Network; (b) Internet Protocol software for the router; and (c) connector and power cables. Customer must furnish a demarcation point at each Customer Premises at which XO DIA Service is to be provisioned.

1.4 Service Provisioning. If XO, in its sole discretion, decides to provide Service via copper facilities acquired from a serving Local Exchange Carrier and subsequently ascertains that said facilities are unavailable for use, XO may cancel the Service Order without liability and without any further obligation to Customer.

2.0 USE OF INTERNET SERVICES

2.1 Use of DIA Service is limited to Customer and its End Users, if

any. Customer must notify XO within five (5) days of any notices that are served on Customer that might adversely affect XO including, but not limited to, notices of any claims or proceedings that involve the DIA Service. Customer will promptly notify XO of any errors, "bugs", or problems of which Customer becomes aware. XO exercises no control over, and accepts no responsibility for, the content of the information passing through XO's host computers, network hubs and POPs (the "XO Network"). EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6 BELOW, XO MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, FOR THE DIA SERVICES AND EQUIPMENT IT IS PROVIDING AND DISCLAIMS ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. Use of any information obtained via the XO Network is at Customer's and End User's own risk. XO specifically denies any responsibility for the accuracy or quality of information obtained through its DIA Services.

3.0 TERM AND TERMINATION

3.1 Termination and Cancellation Charges.

3.1.1 Upon the expiration or termination of any order, Customer must, within ten (10) day(s) of such expiration or termination, return, at Customer's expense, any equipment owned by XO in the same condition as when initially installed or delivered (less reasonable wear and tear), as well as any software and other materials provided by XO.

3.1.2 If DIA Service is cancelled after the DIA Service has been ordered but prior to the DIA Start of Service Date, Customer will return, at Customer's expense, any equipment owned by XO in the same condition as when initially installed or delivered (less reasonable wear and tear), as well as any software and other materials provided by XO and, in addition, must pay two (2) month's monthly recurring charge, plus any applicable service ordering and installation charges.

3.1.3 If DIA Service is terminated after it has been activated, Customer will return, at Customer's expense, any equipment owned by XO in the same condition as when initially installed or delivered (less reasonable wear and tear), as well as any software and other materials provided by XO.

3.1.4 It is agreed that XO's damages in the event of DIA Service cancellation will be difficult or impossible to ascertain. The provisions set forth above are intended, therefore, to establish liquidated damages in the event of cancellation or termination and are not intended as a penalty.





4.0 ACCEPTABLE USE POLICY

4.1 Customer acknowledges that it has reviewed the XO Acceptable Use Policy ("AUP") which may be found at: (<http://www.xo.com/legal/>) and agrees to be bound by the then current version of the AUP. The terms and conditions of the AUP, which may be updated from time to time, are hereby incorporated by reference and made a part of this Agreement. The Customer agrees to check back to the AUP website periodically to review any changes to the AUP.

5.0 PRICING

5.1 Pricing for DIA Service is as set forth in the applicable Service Order and may vary depending on port speed, access costs or DIA Equipment costs required to deliver DIA Service to Customer.

5.2 **Committed Data Rate.** If Customer selects a burstable Service and a minimum per Mbps data rate ("Committed Data Rate") applies to a particular IP port, Customer's per-port usage of Service (both Send Traffic and Receive Traffic) via such port will be sampled every five (5) minutes for the previous five (5) minute period. At the end of each monthly billing period, the top five percent (5%) of Send Traffic and Receive Traffic samples for such port will be discarded. The higher of the resulting ninety-fifth (95th) percentile value for Send Traffic or Receive Traffic for such port will be compared to the Committed Data Rate applicable to the port. If the ninety-fifth (95th) percentile of either Send Traffic or Receive Traffic is higher than the applicable Committed Data Rate, Customer, in addition to being liable for the Committed Data Rate, will be liable for payment at the ninety-fifth (95th) percentile level for any usage in excess of the Committed Data Rate at the contracted per Mbps rate. For the purposes of this Exhibit, "Receive Traffic" means traffic from any origination point that is received by Customer from the XO IP Network and "Send Traffic" means traffic from any origination point that is sent by Customer onto the XO IP Network.

6.0 SERVICE LEVEL AGREEMENTS ("SLA")

XO Dedicated Internet Access (DIA) Services are backed by specific service level guarantees.

6.1 Network Availability Guarantee (100%)

The XO® IP Network, as defined in this section, is guaranteed to be available and capable of forwarding IP packets 100% of the time, as averaged over a calendar month. The XO IP network includes the Customer's access port (the port on the XO aggregation router upon which the Customer's circuit terminates) and the XO IP backbone network. The XO IP backbone network includes XO owned and controlled routers and circuits (including any transit connections).

If the Network Availability guarantee is not met in a calendar month, Customer will receive a credit of 1/30th of the Monthly Recurring Charge (MRC) for that month for each full hour of outage in excess of the 100% guaranteed under this SLA. Limits on the credit and the reporting procedures are detailed below.

6.2 Latency Guarantee (55 Milliseconds)

The XO® IP backbone network (as defined in the previous section) is guaranteed to have an average round trip packet transit time within the XO IP backbone network over a calendar month of 55ms or less. The average latency is measured as the average of 15-minute samples across the XO IP backbone network taken throughout the calendar month.

If the Latency guarantee is not met in a calendar month, Customer will receive a credit of 1/30th of the Monthly Recurring Charge (MRC) for that month for each full 1ms above the 55ms average maximum guaranteed under this SLA. Limits on the credit and the reporting procedures are detailed below.

6.3 Packet Loss

The XO® IP backbone network (as defined above) is guaranteed to have a maximum average packet loss of less than 1% over a calendar month. The packet loss is measured as the average of 15-minute samples across the XO IP backbone network taken throughout the calendar month.

If the Packet Loss guarantee is not met in a calendar month, Customer will receive a credit of 1/30th of the Monthly Recurring Charge (MRC) for that month for each full 1% above the 1% average maximum guaranteed under this SLA. Limits on the credit and the reporting procedures are detailed below.

6.4 Network Jitter Guarantee

The average network jitter delay caused by the XO® IP backbone network (as defined above) is guaranteed not to exceed 1ms during any calendar month.

If this Guarantee is not satisfied during a calendar month, Customer will be credited 1/30th of the Monthly Recurring Charge (MRC) for each full millisecond (1ms) exceeding the 1ms average. Limits on the credit and the reporting procedures are detailed below.

6.5 Credit Limits and Reporting Procedures

Total credits under this SLA are limited to the Monthly Recurring Charge (MRC) for the affected DIA service for the month in which the Service does not meet the guarantees. The above guarantees do not include the local access circuit (e.g. local loop), Customer Premises Equipment (router or CPE) or Customer's Local Area Network (LAN), scheduled maintenance events, Customer caused outages or disruptions, interconnections to or from and connectivity within other Internet Service Provider (ISP) networks, and force majeure events (as defined in the Agreement).

Customer must call XO Customer Care at 1.888.575.6398 to request a Dedicated Internet Access (DIA) Service Level Agreement (SLA) credit.

7.0 NETWORK NUMBERS / DOMAIN NAME POLICY

7.1 Customer agrees to the Network Number and Domain Name





**EXHIBIT H
 MASTER SERVICES AGREEMENT
 TELCO COLLOCATION**

This Exhibit H applies to XO's provision and Customer's use of TELCO COLLOCATION and, upon execution by both Parties, is incorporated by reference into and made part of that certain Agreement # MSA487141.

ARTICLE 1 - LICENSE AND PERMISSIBLE USES

1.1 License Grant. Subject to the terms and conditions of the Agreement, including this Exhibit, and the acquisition by Customer of telecommunications Services from XO, XO grants Customer a nonexclusive limited license ("License") to install, operate, maintain, and repair its systems, equipment and connecting lines and cables (collectively, "Equipment") in designated space at real property locations owned, leased or licensed by XO ("XO Premises"). In all instances, Customer must use this License exclusively to connect to XO or, as permitted, alternative service provider telecommunications facilities and equipment ("Facilities") depicted in an applicable Service Order and accompanying Telco Collocation Request Form ("Equipment Space"). The License granted is only a limited license to use the Equipment Space, and to obtain the Services, as applicable, in accordance with the Agreement.

1.2 License Restrictions. Customer must use the License in a lawful manner exclusively to provide telecommunications services to its customers or End Users. In doing so, Customer may not interfere with the use of XO Premises by XO or others, nor may Customer sublicense (or otherwise seek to convey) the XO Premises or allow third parties to use its Equipment Space or Equipment situated on XO Premises. In addition, Customer may not use Equipment Space as a business location or work site by, among other things, housing personnel or receiving mail there.

1.3 Cross-connections. If XO determines it is unable to furnish any Service requested by Customer, XO will allow Customer to cross-connect to a third party carrier in a neutral "meet-me room". In addition, cross-connections between two collocating Customers may be achieved in a meet-me room or such other location designated by XO. In all instances, XO will install and manage the cross-connections at rates set forth in a Service Order.

1.4 Equipment Deliveries. Customer is responsible for receiving Equipment deliveries at each licensed XO Premises and must schedule any delivery with XO's local contact at least twenty-four (24) hours in advance of a delivery. Any delivery made at a loading dock or other receiving area at XO Premises must be removed by Customer to its Equipment Space within five (5) hours of delivery. If Customer fails to do so, XO may remove the delivered Equipment at Customer's risk and expense. Under no circumstance will XO be responsible for receiving Equipment deliveries at XO Premises.

1.5 Technical Services. Customer may obtain XO Technical Services at XO Premises in accordance with the terms, conditions

and pricing set forth in Appendix 1, which XO may modify from time to time upon at least thirty (30) days prior written notice.

ARTICLE 2 - CONDITION OF XO PREMISES

XO makes no warranty regarding XO Premises including, without limitation, the suitability of: (a) Equipment Space; (b) Shared Space (as defined below); or (c) Facilities to be used by Customer. Customer will inspect the XO Premises and other space and must accept them "AS IS" without any need on XO's part to provide additional labor or materials. If Customer is obtaining any space at XO Premises not within a Customer-specific cage or cabinet ("Shared Space"), Customer accepts that such Shared Space is not secure from others with access to XO Premises.

ARTICLE 3 - COLLOCATION LICENSE FEES

Collocation License Fees, which are additional to all charges associated with Service(s) acquired by Customer, are established in applicable Service Orders. Notwithstanding any other provision of this Agreement, Customer is not entitled to abate the payment of a License Fee during any *Force Majeure* event as described in the Agreement.

ARTICLE 4 - TERM AND RENEWAL

4.1 Term. The term of a License for each Equipment Space will be stated on the Service Order ("License Term"). The License Term, and the commencement of billing, will begin on the Start of Service Date. The minimum License Term is one (1) year. If a License Term extends beyond the effective date of termination of the Agreement, the License will continue in effect for the period established in the Service Order.

4.2 Renewal. Unless one Party notifies the other in writing not less than thirty (30) days prior to the expiration of the original or any renewal License Term that it intends not to renew the License, the License will be automatically renewed for successive identical terms, except that XO may modify the License Fee for the renewal License Term. Any renewal License Term is subject to XO's continued ownership, lease or rights as a licensee of the XO Premises at which the Equipment Space is located.

ARTICLE 5 - DELAYS

XO will not be liable for any delay in meeting an accepted Service Request Date for Equipment Space, and Customer may not cancel an accepted Service Order for such Space unless the delay: (a) is due solely to XO; (b) extends more than ninety (90) days beyond the





accepted Service Request Date; and (c) is not caused by any construction undertaken in the Equipment Space.

ARTICLE 6 - RESERVATION OF RIGHTS; NON-EXCLUSIVITY; UNDERLYING LEASE/LICENSE

6.1 Reservation of Rights. Except for rights expressly granted in the License, XO retains all rights: (a) in any lease, sublease or license under which XO occupies the Premises ("Underlying Lease/License"); (b) in any ingress or egress rights involving XO Premises; and (c) XO Facilities, the Equipment Space, and any property therein (other than the Customer Equipment), whether or not embedded in or attached to realty. The License granted herein does not constitute a lease, sublease, assignment or easement of or with respect to real estate and, further, gives Customer (or others) no right of title or ownership in XO Premises, XO or alternative service provider telecommunications Facilities, the Equipment Space or any other XO property.

6.2 Non-exclusivity. XO may extend the same or similar licenses to others to situate their Equipment and Facilities in Equipment Space at XO Premises.

6.3 Underlying Lease/License. If the Agreement, including this Exhibit, is ever interpreted by a landlord, sub-landlord or licensor of XO Premises to violate an Underlying Lease or License, Customer and XO either will co-operate with one another to amend the Agreement or this Exhibit to render it acceptable to the landlord, sub-landlord or licensor, or Customer will remove its Equipment from the XO Premises.

ARTICLE 7 - ACCESS TO XO PREMISES

Except in locations where XO requires escorted access or other limitations on access as specified by XO, XO will provide Customer 24 x 7 key card access to Equipment Space. Key cards will be provided by XO during its normal business hours at specified locations. Customer will be charged for any replacement key cards. Any required special security arrangements may result in additional charges, including escort charges at the rates set forth below. Customer also may be subject to escort charges if XO is required to escort Customer to its Equipment Space. All such access and other activities at XO Premises will be at Customer expense and subject to Customer's providing XO with reasonable advance notice. No escort charges will be assessed without Customer's express approval, including if needed, the issuing of a Customer-provided Purchase Order. Escort charges for which Customer is responsible, and which XO may modify from time to time upon at least thirty (30) days prior written notice, are as follows:

XO Business Hours (Monday-Friday, 8:00 am to 5:00 pm local time (except XO holidays): ONE HUNDRED SIXTY DOLLARS (\$160) per hour, with a one (1) hour minimum charge per event. **All Other Times:** TWO HUNDRED FORTY DOLLARS (\$240) per hour, with a one (1) hour minimum charge per event.

Work exceeding one (1) hour will be invoiced in increments of fifteen

(15) minutes or fraction thereof.

XO may deny Customer access to XO Premises during any period Customer is in breach of the Agreement unless the access is essential to cure the breach. Customer waives all claims arising out of any permissible denial of access.

ARTICLE 8 - INSTALLATION AND OTHER WORK

8.1 Pre-installation. Prior to commencing any work at XO Premises, Customer, at its expense, will prepare and deliver to XO working drawings, plans and specifications ("Plans") detailing the technical characteristics and size of the Equipment, its intended location for placement in the Equipment Space, and the proposed schedule of installation activities. No work may commence until XO has approved the Plans in writing.

8.2 Installation. Customer will:

- (a) perform installation and other work in a safe manner consistent with Equipment specifications, industry standards and practices, and other requirements imposed by XO;
- (b) install Equipment in a manner that minimizes interference with XO and others at XO Premises;
- (c) perform installation activities reasonably characterized as disruptive or noisy before 8:00 a.m. and after 5:00 p.m. local time, or as otherwise requested by XO;
- (d) obtain all required governmental authorizations prior to commencing any work at XO Premises;
- (e) use properly trained, competent, and qualified technicians to install Equipment in accordance with applicable industry standards;
- (f) provide a safe working environment at all times; and
- (g) upon completion of installation or other work, leave XO Premises clean and free of all materials, tools and equipment not required after installation, as well as all rubbish and debris resulting from installation.

8.3 XO Intervention. XO may intervene in Customer installation or other work activities if XO reasonably determines that such undertakings are interfering in operations at the XO Premises or the rights of others in the quiet enjoyment thereof.

ARTICLE 9 - UTILITIES AND INTERRUPTIONS

9.1 Utility Rates, Charges and Costs at XO Premises. XO will use commercially reasonable efforts to have furnished the electrical power necessary to meet reasonable Customer requirements at the rates and charges set forth in the Service Order. Service Order utility rates and related charges notwithstanding, XO, upon thirty (30) days written notice, may increase the charges payable at an XO Premises as a result of any new or revised charge imposed on XO by or through an underlying utility provider or any other cost increase incurred by XO related to the provisioning of electrical power. If the electrical power interferes with the proper operation of Customer





Equipment, Customer, at its own expense, is responsible for acquiring and installing any filtering or regulation devices within the Equipment Space in order to eliminate the interference.

9.2 Separate Electrical Service. If Customer elects to install a separate electrical panel and meter in the Equipment Space for its Equipment, Customer will pay all costs associated with such installation. In addition, Customer must pay all utility rates and charges attributable to the separate panel and meter, as well as reimburse XO for any costs imposed on it by the utility in connection with Customer's separate panel and meter. Customer will pay the utility directly or pay XO the Customer's pro-rata share of the amount invoiced to XO, plus a reasonable management fee.

9.3 Interruptions. XO will use commercially reasonable efforts to notify Customer in advance of any known, planned utility or other interruptions that might affect Customer. In addition, the Parties will use commercially reasonable efforts to avoid any electrical service interruptions and, if necessary, coordinate with one another in connection with any interruptions so as to minimize adverse impacts on Customer Equipment or XO Facilities. In no event will XO be liable to Customer or others as a result of any interruption of electrical service.

9.4 Limits on Power Usage. Customer may not exceed a power draw of eighty percent (80%) of the rated ampacity for each Primary power circuit provided by XO. Secondary power circuits provided to Customer are intended for backup purposes only, and may not be used for primary power by Customer. For Customers with Secondary power circuits, the total combined power draw for all Primary and Secondary power circuits may not exceed eighty percent (80%) of the total rated ampacity for the Primary power circuits. In the event that Customer exceeds the maximum power draw (through an XO technician test), Customer will be notified of the violation and will have 24 hours to adjust Customer's power consumption to within the appropriate range. If after such 24 hour period Customer's power consumption has not been corrected, XO may in its discretion either shut down necessary power circuits to bring the Customers power draw within the limits as stated above or, if Customer has Secondary power circuits, XO may adjust the price for such circuits to the standard retail pricing for Primary power.

ARTICLE 10 - CUSTOMER EQUIPMENT

10.1 Characteristics. Customer Equipment must be designed and constructed to prevent electromagnetic and radio frequency signal leakage. Equipment interconnection to XO Facilities will be in accordance with industry-accepted practices and procedures.

10.2 Equipment Grounding. Customer must ground racks and cabinets not installed by XO pursuant to XO specifications at a ground source furnished by XO. If Customer fails to acquire proper grounding as specified by XO, XO may in its sole discretion, and upon notice to Customer, install the proper grounding at Customer expense.

10.3 Ownership; Risk of Loss. Title to Customer Equipment will remain in Customer, as will the risk of loss associated with such Equipment while on XO Premises. XO will not be liable for any loss of, or damage to, Equipment situated at XO Premises unless the loss or damage results exclusively from XO's gross negligence or willful misconduct. All Equipment supplied by Customer must be conspicuously labeled as its own.

10.4 Maintenance and Repair. Customer, at its expense, will maintain and repair its Equipment to avoid damaging XO Premises or the Facilities of XO or alternative third party telecommunications providers or causing injury to XO employees or others. Under no circumstance will XO be responsible for maintaining or repairing Customer Equipment.

10.5 Removal from XO Premises. Upon the expiration or termination of the License Term, Customer, subject to Article 7 above, will remove its Equipment and other Customer property from XO Premises in a neat and orderly manner and, as necessary, repair any damage caused by such removal. Such removal will be at Customer expense. Any Equipment or property not removed within sixty (60) days of the expiration or termination of a License Term will be removed and disposed of by XO at Customer expense, including costs incurred to repair or restore XO Premises or Facilities. Under no circumstance will XO be liable for any loss or damage caused to Customer's Equipment or other property resulting from such removal and storage.

ARTICLE 11 - LIMITS ON USE; RELOCATION

11.1 Limits on Use. XO, without liability to Customer or others, may: (a) limit the use of Equipment Space by Customer when necessary due to causes beyond XO's control; (b) suspend any and all Services or Facilities, or both, including, without limitation, the furnishing of electrical power; and (c) terminate the operation of Customer Equipment without notice, if XO reasonably believes such action is necessary to protect life, property, or both. When practicable, XO will notify Customer promptly of such action and will cooperate with Customer to return the Equipment to operation.

11.2 Equipment Relocation. XO may relocate, or require the relocation of, Customer Equipment if XO reasonably believes that relocation is necessary or reasons that include, but are not limited to the following: (a) to protect XO Premises, (b) due to the closure or relocation of XO Premises (including but not limited to the termination or expiration of the Underlying Lease or License), (c) to maximize the efficient use of space within the XO Premises, or (d) to maximize the efficiency of heat dissipation within the XO Premises. In such event, XO will provide Customer with reasonable advance notice of the required relocation and will cooperate with Customer in the relocation effort. Customer will be responsible for all relocation costs. If Customer elects not to relocate its Equipment, Customer may terminate the License, subject to its paying all sums due and owing XO up to the time of License termination.



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ARTICLE 12 - ENVIRONMENTAL RESPONSIBILITIES

12.1 Compliances. Consistent with their obligation to comply with applicable legal requirements, the Parties will satisfy federal, state and local environmental, health and safety laws and regulations, including U.S. Environmental Protection Agency regulations issued under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, Superfund Amendments and Reauthorization Act and the Toxic Substances Control Act, and OSHA regulations issued under the Occupational Safety and Health Act of 1970 and all similar or related state laws. Each Party will notify the other Party if compliance inspections occur or citations are issued that impact any aspect of the Agreement, including this Exhibit, or involve any exposure to hazardous materials at XO Premises.

12.2 Posting of Notices. If required by federal, state or local law, XO and Customer will prepare, distribute or post notices pertaining to known, recognized or suspected physical or chemical hazards including, but not limited to, Material Safety Data Sheets (MSDSs) for materials present on, or brought to, XO Premises.

12.3 Customer Materials. Customer is responsible for materials brought by, or on behalf of, Customer onto XO Premises. Customer may not use its materials to create environmental hazards via the use or storage of such materials. Customer will adopt plans to address risks associated with the presence of hazardous materials on XO Premises and, if requested by XO, Customer will demonstrate to XO or others the adequacy of its plans to deal with the risks associated with the materials.

12.4 Permits and Approvals. Customer, at its expense, will obtain, maintain and comply with all permits and approvals required under applicable federal, state or local law. If a regulator refuses to issue a permit or approval to Customer, Customer may request that XO allow Customer to use an existing XO permit or approval. If XO allows such use, Customer, at its expense, will undertake to obtain the permits and approvals required for its use of XO's authorizations. Customer will provide XO with copies of all documents associated with its use of XO's permits and approvals and will cooperate with XO in the creation of any reports or responses to inquiries relating to Customer's use of XO permits and approvals. At all times, Customer will comply with XO's environmental practices and procedures, including the use of environmental "best management practices" (BMP) or the selection of disposition vendors and disposal sites in accordance with XO's selection criteria.

12.5 XO Premises Requirements. Customer is responsible for compliance with XO security, fire, safety, environmental and building requirements by its employees, contractors, visitors and all others whom Customer controls or has the obligation to control. Customer will provide any necessary training with regard to those requirements to those whom it allows to enter XO Premises.

12.6 Emergency Response Plans. Customer, at its expense, will prepare and submit emergency response plans and community right-to-know reporting as required by law in connection with Customer undertakings on XO Premises. Customer will provide XO with a copy of these plans and reports, including revisions as they are made. If XO is required to prepare and submit emergency response plans and community right-to-know reporting, Customer will provide XO with the information needed by XO to complete such plans or reports and will, as needed, cooperate with XO in the implementation of the plans. Customer will be solely responsible for fee payments associated with its plans or reports, and Customer will share, as reasonably agreed between the Parties, in the payment of fees pertaining to any XO plans or reports.

12.7 Special Indemnity. In addition to (and without limiting) the indemnities set forth in the Agreement, including Article 18 below, XO and Customer, with respect to environmental responsibility under this Article 12, will indemnify, defend, and hold each other harmless from and against any claims proceedings, or investigations: (a) proximately caused by the indemnifying Party's gross negligence or willful misconduct; or (b) resulting from the violation or alleged violation of any applicable law, regulation, environmental permit or requirement involving the presence (or alleged presence) of contamination arising out of the indemnifying Party's acts or omissions on XO Premises.

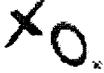
12.8 Harmonization. Any activity affecting safety, health or the environment must: (a) comply with the Underlying Lease or License, and any other applicable agreement; and (b) not interfere in any way with the relationship between XO and landowner or licensor, if any. To achieve these, Customer activities may be limited by, among other things, restricting access to Customer Equipment.

ARTICLE 13 - CUSTOMER'S REPRESENTATIONS AND WARRANTIES

13.1 Customer represents and warrants that it will:

- (a) maintain at all times during the License Term its Equipment and the Equipment Space in good order, repair, and condition;
- (b) provide XO at all times with unrestricted access to the Equipment;
- (c) promptly repair any damage to XO Premises caused by Customer or its representatives;
- (d) not disrupt or otherwise adversely affect XO or others in their use and enjoyment of the XO Premises;
- (e) timely pay its monthly License Fee and other charges; and
- (f) timely obtain at its expense from public or private authorities, and thereafter maintain, all authorizations required to operate and maintain its Equipment at XO Premises.





ARTICLE 14 - INSURANCE

14.1 Coverage. Notwithstanding any other provision of the Agreement, The City will maintain throughout the Term of the Agreement the following insurance coverage either with a licensed insurance company rated A- or better by A.M. Best or its self insurance program: (a) Worker's Compensation Insurance to comply with the state laws in which the Equipment Space is located; (the City self Insures and waives subrogation). (b) Commercial General Liability in an amount not less than \$5,000,000.00 per occurrence / \$5,000,000.00 general aggregate; (The City self insures the first \$1,000,000 of liability). (c) Risk Property Insurance in an amount equal to the replacement cost of all Equipment used by City, and (d) Automobile Liability, including Non-Owned and Hired Auto Liability, in an amount not less than \$1,000,000 Combined Single Limit. "XO Communications, LLC" and the building owner/landlord shall be added as an Additional Insured on City's insurance policies and such policies shall waive all rights of subrogation. All insurance carried by City shall be primary and non-contributory with any insurance carried by XO or the building owner/landlord. City shall provide certificates of insurance prior to entering the Premises. City shall ensure all agents/contractors entering the Premises will maintain the levels of insurance stated above.

14.2 Period. Insurance programs described above shall be maintained by City throughout the Term of the Agreement and any period during which any claims arising from the Agreement are or may be outstanding. Insurance described above may be satisfied by a program of self-insurance by the City; provided such program is approved by XO and meets the upper coverage limits and terms set forth above. Upon City's default in obtaining or delivering any such policy or certificate of insurance or City's failure to pay the premiums therefore, XO may (but shall not be obligated to) secure or pay the premium for any such policy and charge City the cost of such premium, which City agrees to pay, or XO may terminate the Agreement, in whole or in part, without liability to City.

ARTICLE 15 - LIENS

Customer will not permit any mechanic's, material men's or other liens to be filed against all or any part of the XO Premises, Equipment Space, or Facilities, by reason of or in connection with any repairs, alterations, improvements or other work contracted for or undertaken by Customer. Customer, upon request, will provide XO with enforceable, conditional and final lien releases (or other reasonable evidence demonstrating the non-existence or satisfaction of liens) from its contractors or other parties performing work. XO may at all reasonable times post on XO Premises and record any notices of non-responsibility which it deems necessary for protection against such liens. If any liens are filed, Customer, at its expense and, within thirty (30) days after the filing thereof, will cause such lien to be released of record or bonded so that it no longer affects title to the XO Premises, Equipment Space, or Facilities. If Customer fails to timely cause such lien to be so released or bonded, XO may, without waiving its rights and

remedies based on such breach, and without releasing Customer from any of its obligations, cause such lien to be released or bonded. Customer will reimburse XO, within ten (10) business days after receipt of invoice from XO, any sum paid by XO to obtain such bond or release.

ARTICLE 16 - SUBCONTRACTORS

Customer, with XO's prior written consent (which will not be unreasonably withheld), may subcontract any portion of work on XO Premises to any entity competent to perform such work. Customer's subcontractor will be required to provide evidence to XO's reasonable satisfaction that it carries at least the same insurance coverage required of Customer. In no event will any subcontract relieve Customer of its obligations or liabilities under this Agreement.

ARTICLE 17 - TERMINATION

17.1 Termination for Default. XO may terminate a License, in whole or in part, if Customer is in default of its obligations as established in the Agreement or this Exhibit. In such event, Customer will be subject to liability for charges as set forth in 17.3.

17.2 Default Events. Events constituting a default by Customer (and their applicable cure periods) are as follows:

- (a) interference or damage to XO Facilities or other equipment or facilities located at XO Premises caused by the installation, operation, maintenance, replacement or repair of Customer Equipment, which interference or damage must be remedied or cured by Customer within twenty four (24) hours of notice;
- (b) failure by Customer to pay the License Fee, including monthly minimums, or any charges due under the Agreement or this or other Exhibits, which failure must be remedied or cured by Customer as provided in the Agreement;
- (c) abandonment or removal (without replacement) by Customer of Equipment during the applicable License Term;
- (d) failure of Customer to complete the installation of Equipment within one (1) month of the Start of Service Date;
- (e) failure of Customer to comply with use and limitation provisions pertaining to Equipment, as set forth in the Agreement and Article 1 above, which failure must be remedied and cured immediately upon Customer's receipt of notice;
- (f) abandonment of XO Premises by Customer either after Customer has taken possession of the Equipment Space or XO has commenced to construct for Customer at the requested XO Premises; and
- (g) default of any Customer Covenant and Warranty under Article 13.

17.3 Cancellation Charges.

(a) **Prior to Start of Service Date.** A cancellation charge applies if a Service Order for a License is cancelled by Customer without cause



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after it is accepted by XO, but prior to the Start of Service Date. In such event, Customer must pay XO an amount equal to twice the monthly License Fee established in the Service Order. In addition, XO may pursue such other available remedies at law or in equity.

(b) **Liquidated Damages.** Because XO's damages would be difficult or impossible to ascertain with any certainty in connection with any License cancellations or terminations provided for in Articles 17.3 (a), the payments required thereunder are intended to serve as liquidated damages and not a penalty.

ARTICLE 18 - INDEMNIFICATION

In addition to and without limiting any other provision of the Agreement, Customer will defend, indemnify, and hold XO, its principals, officers, directors, agents, and employees harmless from and against any losses, costs, damages, claims, liabilities, and expenses including, but not limited to, reasonable attorneys' fees and court costs (collectively "Losses") resulting from third party claims arising directly or indirectly from the installation, operation, maintenance and repair of Customer's Equipment, or from Customer's or any of Customer's subcontractors' or agents' acts or omissions in connection with its use of the Equipment Space, Premises or Facilities, except to the extent such Losses are due to the gross negligence or willful misconduct of XO or its employees or agents. The provisions of this Article 18 will survive termination of the Agreement and related License(s).

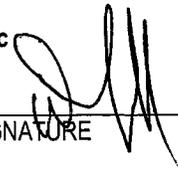
AGREED TO AND ACCEPTED BY:

City of Beverly Hills, Inc

BY:

AUTHORIZED SIGNATURE

DATE



2/8/11

David Schirmer

PRINT NAME

CIO

PRINT TITLE

XO Communications Services, Inc. on behalf of itself and its operating affiliates

BY:

AUTHORIZED SIGNATURE

DATE



2/8/11

Mark Harris

PRINT NAME

General Manager

PRINT TITLE

XO Sales Contact: Dennis Simms





**APPENDIX 1
 TECHNICAL SERVICES**

1.1 Offer. Upon Customer request, XO will: (1) visually inspect Equipment (e.g. check status lights, power lights and cabling); or (2) perform Equipment power reboots (or power re-cycles) pursuant to the written direction of Customer.

1.2 Payment and Response Times. XO will provide Technical Services at the following hourly rates, which may be modified by XO upon at least thirty (30) days notice to Customer, and will respond to Customer requests for Technical Services within the specified response times:

	Rate Per Hour	Minimum Charge Per Event	XO Response Time
XO Business Hours	\$160	1 hour	1 hour
XO Non-Business Hours	\$240	1 hour	2 hours

Work exceeding one (1) hour will be invoiced in increments of fifteen (15) minutes or fraction thereof.

Business Hours are Monday - Friday, 8:00 a.m. to 5:00 p.m., except for XO Holidays. Non-Business hours are all other days and times.

1.3 Required Customer Information. To receive Technical Services, Customer must furnish XO with the following information via fax or e-mail: Customer name; street address and specific location of Equipment Space; Technical Service(s) requested; Customer's technical contact person's name and number where such person can be reached on a 24 x 7 basis; Equipment description (manufacturer name and serial number); specific directions needed to perform the requested Technical Service(s); and the location of any critical buttons/switches/lights on the Equipment. In addition, the following information must be provided to XO, as applicable:

- (a) If Customer occupies cabinet(s):
 - (1) Cabinet number(s) and location(s) within the XO Premises;
 - (2) On a per cabinet basis:
 - (i) Description or Visio drawing including Equipment housed per cabinet and location within each cabinet; and
 - (ii) Physical labels attached to major pieces of Equipment to facilitate identification by XO technician.
- (b) If Customer occupies cage(s):
 - (1) Cage number(s) and location(s) within the XO Premises;
 - (2) Cabinet or Rack number(s) and location(s) within the Telco Collocation cage;
 - (3) On a per cabinet or rack basis:
 - (i) Description or Visio drawing including Equipment housed per cabinet/rack and location within each cabinet/rack; and
 - (ii) Physical labels attached to major pieces of Equipment to facilitate identification by XO technician.
- (c) If Customer occupies Shared Space:
 - (1) Space number(s) and location(s) within the XO Premises;
 - (2) On a per cabinet basis:
 - (i) Description or Visio drawing including Equipment housed per cabinet and location within each cabinet; and
 - (ii) Physical labels attached to major pieces of Equipment to facilitate identification by XO technicians.

XO Holidays are: New Years Day; Martin Luther King Day; President's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving; Christmas Eve; and Christmas Day.

