

Attachment 2

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND UPTOWN SERVICES, LLC TO PROVIDE CONSULTING SERVICES RELATED TO DEVELOPMENT OF A FIBER NETWORK AND SERVICES STRATEGIC PLAN FOR THE CITY

NAME OF CONSULTANT: Uptown Services, LLC

RESPONSIBLE PRINCIPAL OF CONSULTANT: Neil Shaw, President

CONSULTANT'S ADDRESS: 7324 Cortez Lane
Boulder, Colorado 80303

CITY'S ADDRESS: City of Beverly Hills
455 N. Rexford Drive
Beverly Hills, CA 90210
Attention: David Schirmer, Chief Information Officer

COMMENCEMENT DATE: Upon Written Notice

TERMINATION DATE: June 30, 2015, unless sooner terminated

CONSIDERATION: Not to exceed \$50,000.00, including \$45,000.00 for the Services and an amount not to exceed \$5,000.00 for authorized travel expenses

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND UPTOWN SERVICES, LLC TO PROVIDE CONSULTING SERVICES RELATED TO DEVELOPMENT OF A FIBER NETWORK AND SERVICES STRATEGIC PLAN FOR THE CITY

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and Uptown Services, LLC (hereinafter called "CONSULTANT").

RECITALS

A. CITY desires to have certain services provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein by this reference (the "Services").

B. CONSULTANT represents that it is qualified and able to perform the Services in accordance with the terms set forth herein.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Services. CONSULTANT shall perform the Services as described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.

Section 2. Time of Performance. CONSULTANT shall commence its services under this Agreement upon receipt of a written notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above.

Section 3. Compensation. CITY agrees to compensate CONSULTANT and CONSULTANT agrees to accept in full satisfaction for such services required by this Agreement, the Consideration set forth above and more particularly described in Exhibit B, ("Schedule and Rates of Payment"), attached hereto and incorporated herein by this reference. Said Consideration shall constitute reimbursement of CONSULTANT's fee for the services as well as the actual cost of any equipment, materials, and supplies necessary to provide the services (including all labor, materials, delivery, tax, assembly, and installation, as applicable). City shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in Exhibit B.

Section 4. Method of Payment. Unless otherwise provided for herein, CONSULTANT shall submit to City a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall pay CONSULTANT said Consideration in accordance with the schedule of payment set forth in Exhibit B.

Section 5. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent CONSULTANT. Neither CITY nor any of its agents shall have

control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by CONSULTANT without the prior written approval of CITY. Any attempt by CONSULTANT to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible Principal by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Manager or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 11. Insurance.

(a) CONSULTANT 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 One Million Dollars (\$1,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(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 CONSULTANT in performing the Scope of Work required by this Agreement.

(3) A policy or policies of Professional Liability Insurance coverage with minimum limits of One Million Dollars (\$1,000,000).

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

(b) CONSULTANT shall require each of its sub-CONSULTANTS 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) CONSULTANT 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 CONSULTANT's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, or a form satisfactory to the Risk Manager, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT 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 CONSULTANT 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 and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification. CONSULTANT 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 any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five (5) days written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 15. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 16. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

Section 17. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 18. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 19. City Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 20. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

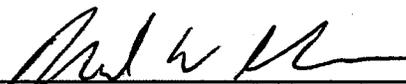
EXECUTED the 26th day of June 2014, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

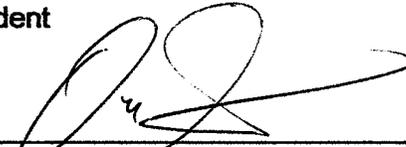


JEFFREY KOLIN *WM*
City Manager

CONSULTANT:
UPTOWN SERVICES, LLC



NEIL V. SHAW
President

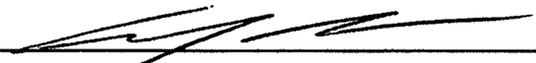


DAVID P. STOCKTON
Principal

APPROVED AS TO CONTENT



DAVID SCHIRMER
Chief Information Officer



KARL KIRKMAN
Risk Manager

EXHIBIT A

SCOPE OF WORK

City's objective is to evaluate the feasibility of providing fiber services to the Beverly Hills commercial community. If the City were able to offer direct fiber connections, the goal would be to:

- To leverage the existing fiber network to provide services to the community that are not currently available from the existing carriers or that are competitive with the existing carrier offerings.
- To attract new carriers or service providers who will introduce additional choices and service competition for the larger businesses, including the city itself, utilizing the city fiber network.
- Generate additional revenue for the city that will support the ongoing operation and expansion of the fiber network and potentially attract new businesses to the city.
- Interconnect with other local municipalities to offer regional point-to-point dark fiber connectivity
- Consultant shall provide professional services (the "Services") related to the research, development and drafting of a Fiber Network & Services Strategic Plan for the City of Beverly Hills. Consultant's services shall include the following:

Phase 1: Market Analysis

Consultant will assess and document the need for local commercial fiber-based services to help define the City's role in providing fiber-delivered services via City fiber. The following work plan and deliverables will be completed by Consultant:

- (a) **Project Deliverable #1: Identification of Local Business Requirements, Willingness to Pay, and Potential Take Rate for City-Provided Lit Fiber Services**
- (i) Consultant will employ two market research approaches to identify current and anticipated local commercial business requirements for high speed telecom services, the extent to which those needs are unmet, and interest in City-provided telecom services.
 - (ii) Consultant will conduct twenty (20) in-depth face-to-face interviews with commercial/industrial business owners or IT managers. The objective with this research approach is to qualify the current usage, pricing terms, technical details regarding connection requirements, unmet needs, and interest and level of support among business communications decision-makers in City-provided lit fiber services. Ideally, those interviewed should be potential customers as a major commercial account for City-provided fiber service. The Client shall approve the interview list and help recruit participants. Information gathered will include but not be limited to:
 1. Current use of broadband services and data networks
 2. Interest and need for high capacity fiber-based services

3. Experience with existing broadband and fiber services in the City and deficiencies with current service and providers
4. Desired and/or expected expansion of fiber infrastructure in the City
5. Responsiveness to price decreases/increases or service improvements
6. Beliefs about how City-provided fiber service could/should impact their perception of the future of the City, economic development potential, etc.

(b) **Project Deliverable #2: Assessment of Fiber-Based Services Currently Offered in Beverly Hills**

(i) Consultant will analyze the local providers of fiber telecommunications services currently available to the commercial business segment in Beverly Hills. Telecom providers with a local presence will be reviewed including the local cable MSO, the Incumbent Local Exchange Carrier, and other carriers serving the business segment with owned or leased fiber. The analysis will cover the following fiber-based telecom services:

1. Internet Access Service (shared bandwidth)
2. High Capacity Access Service (dedicated bandwidth)
3. Point-to-Point Transport Service
4. Local Metropolitan Area Network Services

(ii) Consultant will identify the local offerings of the existing providers. We will also analyze the pricing of current service offerings where possible (many high capacity service contracts within the business segment are priced on an Individual Case Basis, with the exception of Internet Access). In completing this task, Consultant will complete a side-by-side comparison of each fiber service offering.

(c) **Project Deliverable #3: Gap Analysis of Current and Forward-Looking Unmet Fiber Needs**

(i) Consultant will synthesize the results of the Part 3 deliverables described above (Economic development goals, local business fiber infrastructure requirements and needs, and the assessment of the incumbent fiber-based service offerings) to describe in detail the possible opportunities to enhance technology infrastructure in Beverly Hills. The results of the depth interviews and review of incumbent offerings will provide the needed data to complete a gap analysis that describes what attributes and technical performance needs of telecommunications infrastructure are needed now and in the future, but not being delivered via incumbents service providers. In completing this task, Consultant will:

1. Compare those services and capabilities in highest demand by Beverly Hills commercial entities with the current projected technological infrastructure capabilities available to them in Beverly Hills.
2. Identify current and future technology gaps for Commercial Internet access and Large business high capacity and dedicated access.
3. Identify the potential technology solutions for each identified gap.

4. Develop high level operational frameworks for each primary technology solutions (clearly define the City's role in the implementation and operation of each solution) and incorporate these frameworks into the Business Case evaluation.

(d) **Project Deliverable #4: Develop External Market Needs Assessment Report**

- (i) Consultant will draft an initial needs assessment of the commercial market for Client review and input, and then prepare a final external market needs assessment report. The report will document and evaluate the commercial fiber-services market along the dimension identified above. Specifically, the report will include:
 1. Documentation of Beverly Hills's fiber-related economic development goals and vision
 2. Documentation of current fiber-based service offerings available in Beverly Hills
 3. Documentation of the market research and identification of unmet needs described above (for both the depth interview and mail survey research surveys)
 4. Documentation of unmet needs and gap analysis
 5. Draft and final needs assessment reports documenting external fiber-related needs, gaps with current infrastructure, and support for City-provided fiber services

Phase 2: Technical Plan

(a) **Project Deliverable #5: Technical Strategy**

- (i) Consultant will develop a technology strategy that will support the implementation of the City's internal business requirements and the provisioning of managed services to local business. The proposed approach and related deliverables are outlined next:
 1. Asset Inventory – Consultant will characterize existing substructure resources (e.g., via existing City power and communications conduit, participation in joint trench projects, and existing AT&T conduit) available to the City. This will be completed based on available GIS level databases and any other information available from the City.
 2. Technology Evaluation – Consultant will review and evaluate the key technology alternatives available for Layers 1 – 3 of the OSI model. Not all protocols and approaches are applicable to every network and Consultant will help the City determine the efficacy of systems like dense wave division multiplexing (DWDM), multiprotocol label switching (MPLS), connection oriented Ethernet (COE), carrier Ethernet (CE 1.0 and CE 2.0) and Layer 3 routing.
 3. Reference Architecture – Consultant will develop reference architecture for a network capable of supporting the aforementioned applications and markets. This reference system will include all applicable Layer 1, Layer 2 and Layer 3 building blocks per the requirements developed in previous steps of this project. Building blocks will also include last mile, metro and middle mile elements. The primary technology will be assumed to be fiber based, but wireless and free space optics will also be evaluated for cases where capital requirements are too high for a fiber solution.

4. **Efficient Fiber Deployment Process** – Consultant will outline different fiber expansion approaches that maximize the City's ability to leverage the same asset for multiple purposes. Such a strategy would be driven by a combination of creative engineering, business case analysis and network design. Achieving success in this area also requires that the City select equipment, materials and services partners that offer economical approaches building and expanding the network.

EXHIBIT B

SCHEDULE AND RATES OF PAYMENT

City shall pay Consultant an amount not to exceed Fifty Thousand Dollars (\$50,000.00) for the services provided under this Agreement as detailed below.

Description	Amount
Phase 1 – Market Analysis	\$25,000.00
Phase 2 – Analyze	\$20,000.00
Travel (not to exceed)	\$5,000.00
Total Not-To-Exceed	\$50,000.00

Consultant shall invoice City for actual hours worked up to the not-to-exceed cost for each phase. Consultant shall invoice City for actual travel expenses incurred up to the not-to-exceed amount identified above.

Consultant shall submit an itemized statement to City for its services performed for the prior month or weeks, which shall include documentation setting forth, in detail, a description of the services rendered and the hours of service. For reimbursement of travel, Consultant shall submit copies of receipts as supporting documentation, and City shall pay Consultant all undisputed amounts of such billing within thirty (30) days of receipt of the same.

EXHIBIT C

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below :

NAMED INSURED

COMPANIES AFFORDING COVERAGE

ADDRESS

- A.
- B.
- C.

COMPANY (A.B.C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B.I.	LIMITS P.D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONSULTANT'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKER'S COMPENSATION					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy:CONSULTANT agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of CONSULTANT's officers, employees, agents or others employed by CONSULTANT while engaged by CONSULTANT in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE : _____ BY : _____
Authorized Insurance Representative

TITLE : _____

AGENCY : _____ Address : _____
