

11

TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: UTILITIES

DATE: FEBRUARY 1, 2010 CMR: 130:10

REPORT TYPE: CONSENT

SUBJECT: APPROVAL OF AMENDMENT NUMBER THREE TO CONTRACT NO. S09128567 WITH COLUMBIA TELECOMMUNICATIONS CORPORATION (CTC) TO RETAIN PROFESSIONAL TELECOMMUNICATIONS ENGINEERING SERVICES IN SUPPORT OF AN ECONOMIC STIMULUS GRANT APPLICATION FOR THE BROADBAND PROJECT IN AN AMOUNT NOT TO EXCEED \$50,000 DURING CALENDAR YEAR 2010

RECOMMENDATION

Amend a contract (Agreement No. S09128567) with Columbia Telecommunications Corporation (CTC), in an amount not to exceed \$50,000, to provide telecommunications engineering evaluation and system design services. These services are necessary to assist the City in preparing a grant application for federal economic stimulus money available under the American Recovery and Reinvestment Act (ARRA). Under ARRA, the Commerce Department's National Telecommunications and Information Administration (NTIA) administers the Broadband Technology Opportunities Program (BTOP), which provides grants for deploying broadband infrastructure in unserved and underserved areas of the United States. An economic stimulus grant award under the NTIA's BTOP would support the advancement of the Citywide Ultra High-Speed Broadband Project.

BACKGROUND

A contract was executed with Columbia Telecommunications Corporation (CTC) on July 28, 2008, to provide telecommunications engineering support for the Ultra High-Speed Broadband Project, in an amount not to exceed \$25,000.

On July 14, 2008, the Council directed staff to enter into a Letter of Intent with a consortium of firms (Consortium) that would partner with the City to develop the Ultra High-Speed Broadband Project. CTC was hired to assist staff in the development of the technical aspects of the Letter of Intent. CTC was selected because of its prior experience in working with the City on the upgrade of the Comcast cable system. CTC also supported the design and development of an Institutional Network that connects public schools, public buildings, and community centers in Palo Alto and the surrounding area. CTC has expertise and experience in designing and implementing telecommunications networks for a multitude of municipalities across the country.

Broadband Project. On March 30, 2009, the CTC agreement was amended, bringing the total contract amount to \$50,000. The additional scope of services was for “telecommunications engineering services in support of economic stimulus grant application(s) for the Broadband Project.” Given CTC’s experience with the design requirements of the Ultra High-Speed Broadband Project and the short timeframe allotted to develop the grant proposal, it was impracticable to solicit proposals for this work scope. The agreement was amended again on June 1, 2009, bringing the contract total to \$85,000, with the same scope of work. There is approximately \$12,000 left under the contract.

DISCUSSION

On July 13, 2009, staff informed the Council that the City was not eligible for first round grant assistance. The broadband economic stimulus grant program was to have two more funding rounds after the first round. On November 12, 2009, the NTIA announced that there would be only one more round of funding, which would begin in early 2010. On January 15, 2010, the rules and new standards for the second round of funding were announced. The new rules and standards do not bar the City from submitting an application for grant funding. The grant application is due by March 15, 2010. To meet the application deadline, additional engineering support services by CTC will be required. The normal time needed to conduct the competitive bid process would not allow the City to timely apply for grant assistance. Thus, it is impracticable to solicit competitive proposals from others under the current circumstances.

The final round grant application document will not be available until February 16, 2010. A contract amendment in an amount not to exceed \$50,000 is requested to obtain professional services from CTC to support the quick turnaround for the submission of the round two grant application.

Since time is of the essence, this is a request for an exemption from competitive solicitation, because it is impracticable to solicit proposals to support the submission of an economic stimulus grant application(s).

The expected length of the contract is one year.

RESOURCE IMPACT

A mid-year budget request is necessary to transfer \$50,000 from the Fiber Optics Fund Rate Stabilization Reserve. This transaction will reduce the Fiber Optics Fund Rate Stabilization Reserve from \$6,435,147 to \$6,385,147.

POLICY IMPLICATIONS

The report is consistent with the Council’s policy and program direction provided to staff.

ENVIRONMENTAL REVIEW

The actions requested in this report do not constitute a project for the purposes of the California Environmental Quality Act. Build-out of the Broadband System is subject to the requirements of the California Environmental Quality Act due to the installation, construction and maintenance of facilities in the public rights-of-way. Necessary environmental review will occur when appropriate.

On March 9, 2009, the Consortium withdrew from its participation in the project. The Council directed staff to pursue federal economic stimulus money to proceed with the Ultra High-Speed Broadband Project. On March 30, 2009, the CTC agreement was amended, bringing the total contract amount to \$50,000. The additional scope of services was for “telecommunications engineering services in support of economic stimulus grant application(s) for the Broadband Project.” Given CTC’s experience with the design requirements of the Ultra High-Speed Broadband Project and the short timeframe allotted to develop the grant proposal, it was impracticable to solicit proposals for this work scope. The agreement was amended again on June 1, 2009, bringing the contract total to \$85,000, with the same scope of work. There is approximately \$12,000 left under the contract.

DISCUSSION

On July 13, 2009, staff informed the Council that the City was not eligible for first round grant assistance. The broadband economic stimulus grant program was to have two more funding rounds after the first round. On November 12, 2009, the NTIA announced that there would be only one more round of funding, which would begin in early 2010. On January 15, 2010, the rules and new standards for the second round of funding were announced. The new rules and standards do not bar the City from submitting an application for grant funding. The grant application is due by March 15, 2010. To meet the application deadline, additional engineering support services by CTC will be required. The normal time needed to conduct the competitive bid process would not allow the City to timely apply for grant assistance. Thus, it is impracticable to solicit competitive proposals from others under the current circumstances.

The final round grant application document will not be available until February 16, 2010. A contract amendment in an amount not to exceed \$50,000 is requested to obtain professional services from CTC to support the quick turnaround for the submission of the round two grant application.

Since time is of the essence, this is a request for an exemption from competitive solicitation, because it is impracticable to solicit proposals to support the submission of an economic stimulus grant application(s).

The expected length of the contract is one year.

RESOURCE IMPACT

Funds are available in the 2009-2010 Fiber Optics Fund reserves (approximately \$7 million).

POLICY IMPLICATIONS

The report is consistent with the Council’s policy and program direction provided to staff.

ENVIRONMENTAL REVIEW

The actions requested in this report do not constitute a project for the purposes of the California Environmental Quality Act. Build-out of the Broadband System is subject to the requirements of the California Environmental Quality Act due to the installation, construction and maintenance of facilities in the public rights-of-way. Necessary environmental review will occur when appropriate.

PREPARED BY:

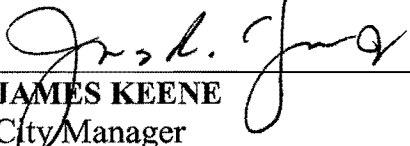
JIM FLEMING 
Management Specialist

TOMM MARSHALL
Assistant Director, Utilities Engineering

APPROVED BY:


For **VALERIE FONG**
Director, Utilities Department

CITY MANAGER APPROVAL:


JAMES KEENE
City Manager



CITY OF PALO ALTO CONTRACT NO. S09128567

AGREEMENT BETWEEN THE CITY OF PALO ALTO AND
COLUMBIA TELECOMMUNICATIONS CORPORATION
FOR PROFESSIONAL SERVICES FOR
ENGINEERING SUPPORT SERVICES FOR THE ULTRA HIGH SPEED BROADBAND
PROJECT

This AGREEMENT is entered into July 28, 2008, by and between the CITY OF PALO ALTO, a charter city and a municipal corporation of the State of California ("CITY"), and COLUMBIA TELECOMMUNICATIONS CORPORATION, Maryland based firm, licensed to do business in the State of California, located at 5562 Heron Point Road, Royal Oak, MD 21662 (PH) 410-745-5958("CONSULTANT").

RECITALS

The following recitals are a substantive portion of this Agreement.

A. CITY intends to provide a city-wide open -access fiber to the premise network ("Project") and desires to engage a consultant to assist the City in negotiating the technical aspects of the Letter of Intent and other applicable Agreements, and to provide other related Engineering Support Consultant Services in connection with the Project ("Services").

B. CONSULTANT has represented that it has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

C. CITY in reliance on these representations desires to engage CONSULTANT to provide the Services as more fully described in Exhibit "A", Scope of Services, attached to and made a part of this Agreement.

NOW, THEREFORE, in consideration of the recitals, covenants, terms, and conditions, this Agreement, the parties agree:

AGREEMENT

SECTION 1. SCOPE OF SERVICES. CONSULTANT shall perform the Services described in Exhibit "A" in accordance with the terms and conditions contained in this Agreement. The performance of all Services shall be to the reasonable satisfaction of CITY.

SECTION 2. TERM. The term of this Agreement shall be from the date of its full execution through completion of the services in accordance with the Schedule of Performance attached as Exhibit "B", unless terminated earlier pursuant to Section 19 of this Agreement.

SECTION 3. SCHEDULE OF PERFORMANCE. Time is of the essence in the performance of Services under this Agreement. CONSULTANT shall complete the Services within the term of this Agreement and in accordance with the schedule set forth in Exhibit "B", attached to and made a part

of this Agreement. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by CONSULTANT in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the CONSULTANT. CITY's agreement to extend the term or the schedule for performance shall not preclude recovery of damages for delay if the extension is required due to the fault of CONSULTANT.

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for professional services and reimbursable expenses, shall not exceed twenty five thousand dollars (\$25,000.00). The applicable rates and schedule of payment are set out in Exhibit "C", entitled "COMPENSATION," which is attached to and made a part of this Agreement.

Additional Services, if any, shall be authorized in accordance with and subject to the provisions of Exhibit "C". CONSULTANT shall not receive any compensation for Additional Services performed without the prior written authorization of CITY. Additional Services shall mean any work that is determined by CITY to be necessary for the proper completion of the Project, but which is not included within the Scope of Services described in Exhibit "A".

SECTION 5. INVOICES. In order to request payment, CONSULTANT shall submit monthly invoices to the CITY describing the services performed and the applicable charges (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the CONSULTANT's billing rates (set forth in Exhibit "C"). If applicable, the invoice shall also describe the percentage of completion of each task. The information in CONSULTANT's payment requests shall be subject to verification by CITY. CONSULTANT shall send all invoices to the City's project manager at the address specified in Section 12 below. The City will generally process and pay invoices within thirty (30) days of receipt.

SECTION 6. QUALIFICATIONS/STANDARD OF CARE. All of the Services shall be performed by CONSULTANT or under CONSULTANT's supervision. CONSULTANT represents that it possesses the professional and technical personnel necessary to perform the Services required by this Agreement and that the personnel have sufficient skill and experience to perform the Services assigned to them. CONSULTANT represents that it, its employees and subconsultants, if permitted, have and shall maintain during the term of this Agreement all licenses, permits, qualifications, insurance and approvals of whatever nature that are legally required to perform the Services.

All of the services to be furnished by CONSULTANT under this agreement shall meet the professional standard and quality that prevail among professionals in the same discipline and of similar knowledge and skill engaged in related work throughout California under the same or similar circumstances.

SECTION 7. COMPLIANCE WITH LAWS. CONSULTANT shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement. CONSULTANT shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

SECTION 8. ERRORS/OMISSIONS. CONSULTANT shall correct, at no cost to CITY, any and all errors, omissions, or ambiguities in the work product submitted to CITY, provided CITY gives notice to CONSULTANT. If CONSULTANT has prepared plans and specifications or other design documents to construct the Project, CONSULTANT shall be obligated to correct any and all errors, omissions or ambiguities discovered prior to and during the course of construction of the Project. This obligation shall survive termination of the Agreement.

SECTION 9. COST ESTIMATES. If this Agreement pertains to the design of a public works project, CONSULTANT shall submit estimates of probable construction costs at each phase of design submittal. If the total estimated construction cost at any submittal exceeds ten percent (10%) of the CITY's stated construction budget, CONSULTANT shall make recommendations to the CITY for aligning the PROJECT design with the budget, incorporate CITY approved recommendations, and revise the design to meet the Project budget, at no additional cost to CITY.

SECTION 10. INDEPENDENT CONTRACTOR. It is understood and agreed that in performing the Services under this Agreement CONSULTANT, and any person employed by or contracted with CONSULTANT to furnish labor and/or materials under this Agreement, shall act as and be an independent contractor and not an agent or employee of the CITY.

SECTION 11. ASSIGNMENT. The parties agree that the expertise and experience of CONSULTANT are material considerations for this Agreement. CONSULTANT shall not assign or transfer any interest in this Agreement nor the performance of any of CONSULTANT's obligations hereunder without the prior written consent of the city manager. Consent to one assignment will not be deemed to be consent to any subsequent assignment. Any assignment made without the approval of the city manager will be void.

SECTION 12. SUBCONTRACTING.

CONSULTANT shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of the city manager or designee.

CONSULTANT shall be responsible for directing the work of any subconsultants and for any compensation due to subconsultants. CITY assumes no responsibility whatsoever concerning compensation. CONSULTANT shall be fully responsible to CITY for all acts and omissions of a subconsultant. CONSULTANT shall change or add subconsultants only with the prior approval of the city manager or his designee.

SECTION 13. PROJECT MANAGEMENT. CONSULTANT will assign Lee Afflerbach, P.E., as the project director to have supervisory responsibility for the performance, progress, and execution of the Services and as the project coordinator to represent CONSULTANT during the day-to-day work on the Project. If circumstances cause the substitution of the project director, project coordinator, or any other key personnel for any reason, the appointment of a substitute project director and the assignment of any key new or replacement personnel will be subject to the prior written approval of the CITY's project manager. CONSULTANT, at CITY's request, shall promptly remove personnel who CITY finds do not perform the Services in an acceptable manner, are uncooperative, or present a threat to the adequate or timely completion of the Project or a threat to

the safety of persons or property.

The City's project manager is Melissa Cavallo, Administrative Services Department, 250 Hamilton Avenue, Palo Alto, CA 94303, Telephone: 650-329-2208. The project manager will be CONSULTANT's point of contact with respect to performance, progress and execution of the Services. The CITY may designate an alternate project manager from time to time.

SECTION 14. OWNERSHIP OF MATERIALS. Upon delivery, all work product, including without limitation, all writings, drawings, plans, reports, specifications, calculations, documents, other materials and copyright interests developed under this Agreement shall be and remain the exclusive property of CITY without restriction or limitation upon their use. CONSULTANT agrees that all copyrights which arise from creation of the work pursuant to this Agreement shall be vested in CITY, and CONSULTANT waives and relinquishes all claims to copyright or other intellectual property rights in favor of the CITY. Neither CONSULTANT nor its contractors, if any, shall make any of such materials available to any individual or organization without the prior written approval of the City Manager or designee. CONSULTANT makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work.

SECTION 15. AUDITS. CONSULTANT will permit CITY to audit, at any reasonable time during the term of this Agreement and for three (3) years thereafter, CONSULTANT's records pertaining to matters covered by this Agreement. CONSULTANT further agrees to maintain and retain such records for at least three (3) years after the expiration or earlier termination of this Agreement.

SECTION 16. INDEMNITY.

To the fullest extent permitted by law, CONSULTANT shall protect, indemnify, defend and hold harmless CITY, its Council members, officers, employees and agents (each an "Indemnified Party") from and against any and all demands, claims, or liability of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys fees, experts fees, court costs and disbursements ("Claims") resulting from, arising out of or in any manner related to performance or nonperformance by CONSULTANT, its officers, employees, agents or contractors under this Agreement, regardless of whether or not it is caused in part by an Indemnified Party.

16.2. Notwithstanding the above, nothing in this Section 16 shall be construed to require CONSULTANT to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence or willful misconduct of an Indemnified Party.

16.3. The acceptance of CONSULTANT's services and duties by CITY shall not operate as a waiver of the right of indemnification. The provisions of this Section 16 shall survive the expiration or early termination of this Agreement.

SECTION 17. WAIVERS. The waiver by either party of any breach or violation of any covenant, term, condition or provision of this Agreement, or of the provisions of any ordinance or law, will not be deemed to be a waiver of any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, provision,

ordinance or law.

SECTION 18. INSURANCE.

18.1. CONSULTANT, at its sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage described in Exhibit "D". CONSULTANT and its contractors, if any, shall obtain a policy endorsement naming CITY as an additional insured under any general liability or automobile policy or policies.

18.2. All insurance coverage required hereunder shall be provided through carriers with AM Best's Key Rating Guide ratings of A-:VII or higher which are licensed or authorized to transact insurance business in the State of California. Any and all contractors of CONSULTANT retained to perform Services under this Agreement will obtain and maintain, in full force and effect during the term of this Agreement, identical insurance coverage, naming CITY as an additional insured under such policies as required above.

18.3. Certificates evidencing such insurance shall be filed with CITY concurrently with the execution of this Agreement. The certificates will be subject to the approval of CITY's Risk Manager and will contain an endorsement stating that the insurance is primary coverage and will not be canceled, or materially reduced in coverage or limits, by the insurer except after filing with the Purchasing Manager thirty (30) days' prior written notice of the cancellation or modification, CONSULTANT shall be responsible for ensuring that current certificates evidencing the insurance are provided to CITY's Purchasing Manager during the entire term of this Agreement.

18.4. The procuring of such required policy or policies of insurance will not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions of this Agreement. Notwithstanding the policy or policies of insurance, CONSULTANT will be obligated for the full and total amount of any damage, injury, or loss caused by or directly arising as a result of the Services performed under this Agreement, including such damage, injury, or loss arising after the Agreement is terminated or the term has expired.

SECTION 19. TERMINATION OR SUSPENSION OF AGREEMENT OR SERVICES.

19.1. The city manager may suspend the performance of the Services, in whole or in part, or terminate this Agreement, with or without cause, by giving ten (10) days prior written notice thereof to CONSULTANT. Upon receipt of such notice, CONSULTANT will immediately discontinue its performance of the Services.

19.2. CONSULTANT may terminate this Agreement or suspend its performance of the Services by giving thirty (30) days prior written notice thereof to CITY, but only in the event of a substantial failure of performance by CITY.

19.3. Upon such suspension or termination, CONSULTANT shall deliver to the City Manager immediately any and all copies of studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT or its contractors, if any, or given to CONSULTANT or its contractors, if any, in connection with this Agreement. Such materials will

become the property of CITY.

19.4. Upon such suspension or termination by CITY, CONSULTANT will be paid for the Services rendered or materials delivered to CITY in accordance with the scope of services on or before the effective date (i.e., 10 days after giving notice) of suspension or termination; provided, however, if this Agreement is suspended or terminated on account of a default by CONSULTANT, CITY will be obligated to compensate CONSULTANT only for that portion of CONSULTANT's services which are of direct and immediate benefit to CITY as such determination may be made by the City Manager acting in the reasonable exercise of his/her discretion

19.5. No payment, partial payment, acceptance, or partial acceptance by CITY will operate as a waiver on the part of CITY of any of its rights under this Agreement.

SECTION 20. NOTICES.

All notices hereunder will be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY: Office of the City Clerk
 City of Palo Alto
 Post Office Box 10250
 Palo Alto, CA 94303

With a copy to the Purchasing Manager.

To CONSULTANT: Attention of the project director
 at the address of CONSULTANT recited above

SECTION 21. CONFLICT OF INTEREST.

21.1. In accepting this Agreement, CONSULTANT covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services.

21.2. CONSULTANT further covenants that, in the performance of this Agreement, it will not employ subconsultants, contractors or persons having such an interest. CONSULTANT certifies that no person who has or will have any financial interest under this Agreement is an officer or employee of CITY; this provision will be interpreted in accordance with the applicable provisions of the Palo Alto Municipal Code and the Government Code of the State of California.

21.3. If the Project Manager determines that CONSULTANT is a "Consultant" as that term is defined by the Regulations of the Fair Political Practices Commission, CONSULTANT shall be required and agrees to file the appropriate financial disclosure documents required by the Palo Alto Municipal Code and the Political Reform Act.

SECTION 23. NONDISCRIMINATION. As set forth in Palo Alto Municipal Code section 2.30.510, CONSULTANT certifies that in the performance of this Agreement, it shall not

discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. CONSULTANT acknowledges that it has read and understands the provisions of Section 2.30.510 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Section 2.30.510 pertaining to nondiscrimination in employment, including completing the form furnished by CITY and set forth in Exhibit "E."

SECTION 24. MISCELLANEOUS PROVISIONS.

24.1. This Agreement will be governed by the laws of the State of California.

24.2. In the event that an action is brought, the parties agree that trial of such action will be vested exclusively in the state courts of California in the County of Santa Clara, State of California.

24.3. The prevailing party in any action brought to enforce the provisions of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with that action. The prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

24.4. This document represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and contracts, either written or oral. This document may be amended only by a written instrument, which is signed by the parties.

24.5. The covenants, terms, conditions and provisions of this Agreement will apply to, and will bind, the heirs, successors, executors, administrators, assignees, and consultants of the parties.

24.6. If a court of competent jurisdiction finds or rules that any provision of this Agreement or any amendment thereto is void or unenforceable, the unaffected provisions of this Agreement and any amendments thereto will remain in full force and effect.

24.7. All exhibits referred to in this Agreement and any addenda, appendices, attachments, and schedules to this Agreement which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in this Agreement and will be deemed to be a part of this Agreement.

24.8. This Agreement is subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. This Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal year and funds for this Agreement are no longer available. This Section 24.8 shall take precedence in the event of a conflict with any other covenant, term, condition, or provision of this Agreement.

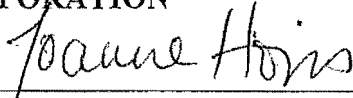
24.9. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized representatives executed this Agreement on the date first above written.

CITY OF PALO ALTO


Contract Manager

COLUMBIA TELECOMMUNICATIONS CORPORATION

By: 

Name: Joanne Horis

Title: President

Taxpayer Identification No.

52-1442373

Attachments:

- EXHIBIT "A": SCOPE OF WORK
- EXHIBIT "B": SCHEDULE OF PERFORMANCE
- EXHIBIT "C": COMPENSATION
- EXHIBIT "C-1": SCHEDULE OF RATES
- EXHIBIT "D": INSURANCE REQUIREMENTS
- EXHIBIT "E": CERTIFICATION OF NONDISCRIMINATION

EXHIBIT "A"

SCOPE OF SERVICES

Telecommunications Systems Engineering Scope of Services

Assist the City in negotiating the technical aspects of the Letter of Intent and Agreements (e.g., Dark Fiber License, Facility Use Agreement, Pole Attachment Agreement, Conduit Occupancy Agreement, and Management Service Agreement) with the 180 Consortium for a citywide open-access fiber to the premise network (Network). Aid in the establishment of the Network's technical and performance requirements and in the development of service level agreements. Assist the City in developing a plan to secure its vital functions that reside on the Network. Ensure all costs for preparing the dark fiber backbone for SPE use are included in the Consortium's construction cost estimates. Help the parties to define responsibility for maintenance, repair and capital replacement for the City's dark fiber backbone:

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

CONSULTANT shall complete the Services detailed in Exhibit A, Scope of Services, in a timely manner agreed upon by both CONSULTANT and the City's Project Manager.

EXHIBIT "C" COMPENSATION

The CITY agrees to compensate the CONSULTANT for professional services performed in accordance with the terms and conditions of this Agreement based on the hourly rate schedule attached as Exhibit C-1.

The compensation to be paid to CONSULTANT under this Agreement for all services described in Exhibit "A" ("Services") and reimbursable expenses shall not exceed \$25,000.00. CONSULTANT agrees to complete all Services, including reimbursable expenses, within this amount. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to the CITY.

REIMBURSABLE EXPENSES

The administrative, overhead, secretarial time or secretarial overtime, word processing, photocopying, in-house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. CITY shall reimburse CONSULTANT for the following reimbursable expenses at cost.

A. Travel outside the San Francisco Bay area, including transportation and meals, will be reimbursed at actual cost subject to the City of Palo Alto's policy for reimbursement of travel and meal expenses for City of Palo Alto employees, and will be subject to pre-approval by the CITY..

B. Long distance telephone cellular phone, facsimile transmission and postage charges are reimbursable at actual cost.

All requests for payment of expenses shall be accompanied by appropriate backup information. Any expense anticipated to be more than \$250.00 shall be approved in advance by the CITY's project manager.

ADDITIONAL SERVICES

The CONSULTANT shall provide additional services only by advanced, written authorization from the CITY. The CONSULTANT, at the CITY's project manager's request, shall submit a detailed written proposal including a description of the scope of services, schedule, level of effort, and CONSULTANT's proposed maximum compensation, including reimbursable expenses, for such services based on the rates set forth in Exhibit C-1. The additional services scope, schedule and maximum compensation shall be negotiated and agreed to in writing by the CITY's Project Manager and CONSULTANT prior to commencement of the services. . Payment for additional services is subject to all requirements and restrictions in this Agreement.

EXHIBIT "C-1"
HOURLY RATE SCHEDULE



Columbia Telecommunications Corporation
10613 Concord Street • Kensington, MD 20895 • 301-993-1488 • fax: 301-993-3340 • www.CTCnet.us

COLUMBIA TELECOMMUNICATIONS CORPORATION

2008 BILLING RATES

Principal Engineer/Analyst	\$150
Senior Project Engineer/Analyst	\$140
Senior Engineer/Analyst	\$130
Staff Engineer/Analyst	\$120
Engineer Aide II	\$ 65

Services to clients are billed on an hourly basis. CTC's billing rates are inclusive of all routine expenses including administrative, accounting, and computer support, telephone calls, and photocopying. Non-routine expenses and long-distance travel are recovered at direct cost with no mark-up.

Payment is due within thirty (30) days of invoice.

AMENDMENT NO. 1 TO AGREEMENT NO. S09128567
BETWEEN THE CITY OF PALO ALTO AND
COLUMBIA TELECOMMUNICATIONS CORPORATION

This Amendment No. 1 to Agreement No. S09128567 ("Agreement") is entered into March 30, 2009, by and between the CITY OF PALO ALTO ("CITY"), and COLUMBIA TELECOMMUNICATIONS CORPORATION, Maryland based firm, licensed to do business in the State of California, located at 5562 Heron Point Road, Royal Oak, MD 21662 (PH) 410-745-5958 ("CONSULTANT").

R E C I T A L S:

WHEREAS, the Agreement was entered into on July 28, 2008, between the parties for the provision of ENGINEERING SUPPORT SERVICES FOR THE ULTRA HIGH SPEED BROADBAND PROJECT; and

WHEREAS, the parties wish to amend the Agreement;

NOW, THEREFORE, in consideration of the covenants, terms, conditions, and provisions of this Amendment, the parties agree:

SECTION 4. The section entitled "NOT TO EXCEED COMPENSATION" is hereby amended, to read as follows:

SECTION 4. NOT TO EXCEED COMPENSATION. The compensation to be paid to CONSULTANT for performance of the Services described in Exhibit "A", including both payment for

professional services and reimbursable expenses, shall not exceed fifty thousand dollars (\$50,000.00). The applicable rates and schedule of payment are set out in Exhibit "C", entitled "COMPENSATION," which is attached to and made a part of this Agreement.

EXHIBITS. The following exhibit(s) to the Agreement is/are hereby amended to read as set forth in the attachment(s) to this Amendment, which are incorporated in full by this reference:

- a. Exhibit A-1 entitled: Additional Scope
- b. Exhibit C entitled: COMPENSATION.

Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendments thereto, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have by their duly authorized representatives executed this Amendment on the date first above written.

CITY OF PALO ALTO

COLUMBIA TELECOMMUNICATIONS CORPORATION

APPROVED AS TO FORM:


Senior Asst. City Attorney

By: Joanne S Hous
Name: Joanne S Hous
Title: President

APPROVED:

 4/30/89
Purchasing Manager

By: _____
Name: _____
Title: _____

Attachments:

EXHIBIT "A-1": ADDITIONAL SCOPE
EXHIBIT "C" Revised: COMPENSATION

EXHIBIT "A-1"
ADDITIONAL SCOPE

In addition to the Scope of Services detailed in EXHIBIT.A", SCOPE OF SERVICE' CONSULTANT will provide:

"Telecommunications engineering services in support of economic stimulus grant application(s) for the Broadband Project."