City of Loma Linda Official Report

Floyd Petersen, Mayor
Stan Brauer, Mayor pro tempore
Robert Christman, Councilmember
Robert Ziprick, Councilmember
Charles Umeda, Councilmember

COUNCIL AGENDA: June 13, 2006

TO: City Council

VIA: Dennis R. Halloway, City Manager

FROM: W. James Hettrick, Director of Information Systems

SUBJECT: AWARD OF CONTRACT FOR LOMA LINDA CONNECTED COMMUNITY PROGRAM INSPECTOR AND ENGINEER LIASON

RECOMMENDATION:

It is recommended that the City Council award the contract to Cable Testing Enterprises located at 1523 Lori Ct, Redlands, Ca 92374 for inspection and engineer liaison professional services for the Loma Linda Connected Community Program.

BACKGROUND:

The City requires that all new development and additions that exceed fifty percent (50%) of the original structure which are also within the Fiber-Optic Master Plan Area, to install structure wiring and fiber-optic hardware per the City's specifications, and subsequently deed such hardware over to the City upon completion of construction. Eventually, this hardware will be tied into the City's fiber-optic "backbone" infrastructure to provide a complete fiber-optic network. The purpose of the Project is to provide the City's businesses and residents with opportunities for voice, data, video, multimedia, home automation systems, environmental control, security, audio, television, sensors, alarms, and intercom.

ANALYSIS:

The City provides inspections and engineering assistance for all new residential and commercial construction projects. This verifies that the municipal code is followed for compliance with the LLCCP standards. The City coordinates the fiber and structure wiring design for each project. Conducts backbone and joint trench inspections and sign-offs. Conducts foundation, pre-wire, post-wire inspections and sign-offs and ensure MDF building schedules are met prior to any escrow closings. The City also is required to provide drawings, splice details and documentation for validation and justification to modify the LLCCP Specification. The City also is responsible to design and implement integration with all the capital projects and documentation of all assets. The LLCCP program also conducts interfaces with Verizon, SCE, Adelphia, and all other utility companies with use of LLCCP infrastructure and interrelationship with other City departments.

The current and potential development level has created a need for us to outsource the inspection and engineering component of the LLCCP program. The contract is renewable on an annual basis that corresponds to the cities fiscal year.

ENVIROMENTAL:

NA

FINANCIAL IMPACT:

Funding will be provided from account no 40-5900-1830

The funds for the contract or directly derived from the fees charged to the developer during the permitting process. The 2006 – 2007 fiscal year budget has $60,000 budgeted in Revenue from developer permit fees. Therefore, there is no financial impact.

Attachments:

A) Contract for Services

CITY OF LOMA LINDA
PROFESSIONAL SERVICES AGREEMENT
FOR
LOMA LINDA CONNECTED COMMUNITY PROGRAM
INSPECTOR AND ENGINEERING LIAISON

1. PARTIES AND DATE.

This Professional Services Agreement ("Agreement") is made and entered into this ____ day of _____, 2006, by and between the City of Loma Linda, a California municipal corporation ("CITY"), and **[CABLE TESTING ENTERPRISES]**, a **[CORPORATION]** ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" herein.

2. RECITALS.

2.1 City. City is a California municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing the services set forth herein and the exhibits attached hereto, is licensed in the State of California as necessary or required, and is familiar with the City's Connected Community Program, as defined in section 2.3 below. Consultant warrants that it meets the minimum necessary qualifications as set forth in this Agreement and in Exhibit "A" attached hereto and incorporated by reference herein.

2.3 Project. City desires to engage Consultant to render such services for the Connected Community Program ("Project") as set forth in this Agreement. The Project requires that all new development, and additions that exceed fifty percent (50%) of the original structure which are also within the Fiber-Optic Master Plan Area, to install fiber-optic hardware per the City's specifications, and subsequently deed such hardware over to the City upon completion of construction. Eventually, this hardware will be tied into the City's fiber-optic "backbone" infrastructure to provide a complete fiber-optic network. The purpose of the Project is to provide the City's businesses and residents with opportunities for voice, data, video, multimedia, home automation systems, environmental control, security, audio, television, sensors, alarms, and intercom.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional services necessary for the Project ("Services"). The Services required of Consultant are more particularly described in Exhibit "B" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from **[JULY 1, 2006]** to **[JUNE 30, 2007]**, for a period of one (1) year, unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. Consultant shall complete the Services within the applicable Term of the Agreement, and shall meet any other established schedules and deadlines as may be set by City staff on an on-call and as-needed basis from time to time. This Agreement may be renewed on an annual basis upon Consultant giving City notice of its intent to renew at least thirty (30) days prior to the expiration of this Agreement, and upon City obtaining all necessary approvals which may be required.

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law, including the payment of prevailing wages as may be required. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "C" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, CITY shall respond to Consultant's submittals in a timely manner. Upon request of CITY, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon prior written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement in accordance with Sections 3.5.1.1 and 3.5.1.2 herein. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: **[KEITH STOUT, CEO]**.

3.2.5 City's Representative. The City hereby designates James Hettrick, Director of Information Systems, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates **[KEITH STOUT, CEO]** to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff and designated consultants in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner

affecting the performance of the Project or the Services, including but not limited to all Cal/OSHA requirements and prevailing wage laws, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and authorized volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement and related Services by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability:* One Million Dollars ($1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability:* One Million Dollars ($1,000,000) per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability:* Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of One Million Dollars ($1,000,000) per accident for bodily injury or disease.

3.2.10.3 Professional Liability. Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for the Term of this Agreement plus a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than $1,000,000 per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents, and authorized volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and authorized volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and authorized volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and authorized volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and authorized volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and authorized volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and

authorized volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurer(s) with a current A.M. Best's rating of no less than A:VII and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements if applicable, for all Services rendered under this Agreement at the rates set forth in Exhibit "D" attached hereto and incorporated herein by reference. Extra Work may be authorized, as described in Section 3.3.4 below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement and exhibits hereto.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without first obtaining written authorization from City's Representative to proceed.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during

normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. Either Party may, by written notice to the other Party, terminate the whole or any part of this Agreement at any time and without cause by giving written notice of such termination, and specifying the effective date thereof, at least ninety (90) calendar days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those Services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation or costs.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data (as further described in Section 3.5.3.1 below) and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the City's request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, in City's sole discretion, services similar to those provided by Consultant.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY	**Consultant**
City of Loma Linda	**CABLE TESTING ENTERPRISES**
25541 Barton Road	**1523 LORI CT.**
Loma Linda, CA 92354	**REDLANDS, CA 92374**
Attn: James Hettrick,	Attn: **KEITH STOUT**
Information Systems Director	

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans,

specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City. Consultant understands, with respect to Documents and/or Data provided to the City by Consultant, that City may be subject to certain laws, including but not limited to the California Public Records Act, which may require City to disclose certain information to the public upon receipt of a proper request and where no applicable exception(s) exist to said disclosure requirement. City agrees to assert any and all exceptions reasonably available to it under law in the event it receives such a disclosure request and where Consultant has previously informed City of its desire to keep the information sought confidential.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees, expert witness fees, and all other costs of such action.

3.5.6 Indemnification. The Consultant shall defend, indemnify and hold the City, its officials, officers, employees, authorized volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses.

Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or authorized volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or authorized volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or authorized volunteers.

3.5.7 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services, or portion thereof, are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is $1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.5.8 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing properly approved and signed by both Parties.

3.5.6 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

3.5.7 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.8 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.9 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.10 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees,

hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.11 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and authorized volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.12 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.13 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.14 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.15 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.16 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.17 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

[SIGNATURES ON FOLLOWING PAGE]

CITY

By: _____
Name

_____
Title

[CABLE TESTING ENTERPRISES]

By: _____
[KEITH STOUT]
[CEO]

_____

Approved as to Form:

_____
Name

_____
Title

EXHIBIT "A"

MINIMUM QUALIFICATIONS OF CONSULTANT

Minimum Qualifications for LLCCP Inspector and Engineering Liaison (Consultant):

Education and Experience:

Possession of a high school diploma or general equivalency diploma (G.E.D.) and two years of inspection experience, or an equivalent combination of education and experience sufficient to successfully perform the essential duties of the job as listed above, for example, 10 years experience in customer relations management and have significant project management and multiple year project management experience.

Licenses:

For specified positions in the Building and Safety Services Department, possession of or ability to obtain an ICBO Certificate as a Building, Plumbing, Mechanical or Electrical Inspector, or BICSI Registered Communications Distribution Designer (RCDD), Outside Plant (OSP), Local Area Network (LAN) Certificates, or Society of Cable Telecommunications Engineers (SCTE)

For either assignment, must possess and maintain a valid California class C driver's license and a satisfactory driving record.

Physical Requirements and Working Conditions:

Must possess mobility to work in a standard office setting and to use standard office equipment, including a computer, and to walk, climb, stoop and work in cramped conditions or the inspection of various construction and building sites and City infrastructure; strength to lift and carry materials and equipment weighing to 20 pounds; vision to read printed materials and a computer screen; and hearing and speech to communicate in person and over the telephone and/or radio.

Knowledge of (at entry):

Construction methods, materials, tools and equipment used for residential, commercial and industrial projects or for City capital improvement projects;
Inspection techniques for telecommunication, communication, wireless, radio, mechanical, plumbing, electrical, structural and engineering construction; Applicable laws, codes, ordinances and regulations; Standards, methods and practices applicable to City inspections; Computer applications related to the work; Techniques for effectively representing the City and the department; and Techniques for dealing with and solving problems presented by a variety of individuals from various socio-economic, cultural and ethnic backgrounds, in person and over the telephone.

Skill in (at entry):

Inspecting buildings, structures and projects related to the area of assignment; Interpreting, explaining and enforcing codes and regulations; Preparing inspection reports; Reading blueprints, plans and specifications; Reviewing plans and permit applications for final approval; Maintaining accurate records and files; Organizing and prioritizing work and meeting critical deadlines; Using tact, initiative and independent judgment within established procedural guidelines; and Communication and interpersonal skills to interact with co-workers, supervisors and the general public sufficient to exchange or convey information and to receive or deliver work direction.

EXHIBIT "B"

SCOPE OF SERVICES

LLCCP Inspector and Engineering Liaison (Consultant)
Job Description:

The LLCCP Inspector and Engineering Liaison will report to the LLCCP leader and work in concert with the LLCCP Team at all times.

1. They will perform all Builder interfacing on behalf of the LLCCP leader and the LLCCP Team, including:
   a. Coordinate the fiber and structure wiring design for each project;
   b. Conduct backbone and joint trench inspections and sign-offs;
   c. Conduct foundation, pre-wire, post-wire inspections and sign-offs;
   d. Ensure MDF building schedules are met prior to any escrow closings; and
   e. Over see all QA & QC final inspections including power at MDF, DCB and NID.

2. They will participate in all requested or required meetings for the LLCCP Project, including:
   a. Attend weekly meetings to provide status to the LLCCP Team;
   b. Design meetings for LLCCP and receive/process drawings and splice details;
   c. Provide, discuss and document any specification changes to the LLCCP specifications; and
   d. Attend the ARC meeting on a weekly basis.

3. Assist City Engineer or Maintenance personnel on any joint water, sewer, streetlight or capital projects to include the LLCCP and / or SCADA specification requirements, including:
   a. Research City records for any LLCCP and / or SCADA conflicts;
   b. Assist in GIS mapping and cable records for LLCCP and / or SCADA projects; and
   c. Interface with Verizon, SCE, Adelphia or any utility company on City projects.

4. Will represent LLCCP leadership to any potential customers regarding the use of Backbone, Ring, MDU's or Overlay deployment, including:
   a. Make feasibility studies and recommendations on how best to deploy;
   b. Work with MDU managements for design, distribution and MOU's;
   c. Dictate all fiber assignments and maintain database on used fibers within the Ring and Star topologies; and
   d. Assist with all deployments of LLCCP, Mesh and SCADA distributions methods.
5. Document and record all aspects of the LLCCP Inspection Process.
6. Report daily and perform work on site in Loma Linda. Monday Thru Friday 8:00 am to 5:00 pm.
7. Perform other Inspection and Engineering duties as assigned by LLCCP leadership.

EXHIBIT "C"

SCHEDULE OF SERVICES

[INSERT SCHEDULE IF APPLICABLE]

EXHIBIT "D"

COMPENSATION

A purchase order shall be issued in the amount of sixty thousand dollars and zero cents ($60,000.00) within ten (10) business days of Consultant's execution of this Agreement. This amount shall represent the total base payment for one (1) calendar year's worth of services. Consultant shall perform the work described herein, and shall invoice the City on a bi-weekly basis for services rendered. Consultant's invoice shall include, at a minimum, a description of the following work for the preceding month:

(1) Number of residential dwelling units inspected;

(2) Number of commercial sites inspected;

(3) Total number of data jacks inspected;

(4) Types and locations of other miscellaneous sites inspected;

(5) Meetings attended;

(6) Researching and/or interfacing activities conducted;

(7) Studies performed and/or completed; and

(8) All other relevant activities related to the Inspector's duties as described in Exhibit B.

Based on the City's review and acceptance of Consultant's invoice, City will then issue payment, within fifteen (15) calendar days of receiving Consultant's invoice, to Consultant. Payment shall be for services rendered only.

The bi-weekly base payment amount shall be determined by dividing the total base amount of $60,000.00 by twenty-four (24), which is the number of bi-weekly payments to be made in any one calendar year pursuant to this Agreement. **Base payment for each bi-weekly invoice shall not exceed two thousand five hundred dollars and zero cents ($2,500.00).**

In addition to the base payments described above, Consultant shall be entitled to an additional incentive bonus payment ("Bonus Payment") upon completion of inspection of at least five thousand (5,000) data jacks. Once Consultant has submitted evidence, by way of Consultant's bi-weekly invoices, of completing inspections of 5,000 jacks, Consultant shall receive an additional Bonus Payment of five dollars ($5.00) per additional jack inspected over 5,000 for the remainder of the Term of the Agreement.

If this Agreement is renewed in accordance with Section 3, a new purchase order must be issued for Consultant's base payments, and Consultant shall be required to complete inspection of an additional 5,000 data jacks in order to be eligible for the Bonus Payment during the renewed Term.