

**CITY OF SHAFTER
CONSULTANT AND PROFESSIONAL SERVICES AGREEMENT**

This Consultant and Professional Services Agreement is made and entered into as of July 18, 2025 by and between the City of Shafter, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 336 Pacific Avenue, Shafter, California 93263 (“City”), and Smart Fiber Networks, dba Syber Fiber, a California corporation with its principal place of business at 400 Santa Clara St, Suite 100, Vallejo, CA 94590 (hereinafter referred to as “Consultant”). City and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

RECITALS

A. City is a public agency of the State of California and owns a fiber optic network described in Attachment 2, and is in need of professional services for the following project:

Public-Private Partnership for Development, Expansion, and Broadband Internet Access Service for the City’s Municipal Fiber Optic Network (hereinafter referred to as “the Project”).

B. Consultant currently has access to utility poles and attached conduit through an existing arrangement with Atherton Fiber, LLC, a duly licensed competitive local carrier (U-7318-C) that also owns Open5G Inc., another duly licensed competitive local carrier (U-7379-C), and is in the process of acquiring the CPCN of Open5G, Inc., and as such, has all the necessary qualifications to provide services described in this Agreement.

C. The Parties desire by this Agreement to establish the terms for City to retain Consultant to provide the services described herein.

AGREEMENT

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Exhibit “A” along with all terms and conditions set forth in this Agreement.

2. Compensation and Other Network Expenses.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Compensation set forth in Exhibit “B”.

b. The payments specified in Exhibit “B” shall be the only payments made to Consultant for services rendered pursuant to this Agreement.

c. City shall procure and pay for the other network expenses set forth in Exhibit “C”.

3. Additional Services.

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Additional Services are those services related to the Scope of Services of the Consultant set forth in Exhibit "A" but not anticipated at the time of execution of this Agreement. If changes in the Scope of Services seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, Consultant shall provide a letter outlining the proposed changes to the City with a statement of estimated changes in fees or time schedule. Additional Services shall be provided only when a Supplement Agreement or an amendment to this Agreement authorizing such Additional Services is approved by the City Representative, or his or her designee. City reserves the right to perform any Additional Services with its own staff or to retain other Consultants to perform said Additional Services. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for three (3) years from the termination date of the Agreement and, while under the terms of this Agreement, be made available for inspection by City.

5. Term.

The term of this Agreement shall commence on **July 18, 2025** and shall continue in full force and effect until **July 17, 2030**, unless earlier terminated as provided herein.

The City shall, at its discretion, have the right to extend the term of this Agreement, in intervals of one (1) or two (2) years, by written notice to the Consultant. The total duration of this Agreement, including the exercise of any extensions under this section, shall not exceed fifteen (15) years. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed").

If the term of this Agreement extends into fiscal years subsequent to that in which it is approved, such continuation of the Agreement is contingent on the appropriation of funds for such purpose by the City Council of the City of Shafter. If funds to effect such continued payment are not appropriated, Consultant agrees to terminate any services supplied to City under this Agreement, and relieve City of any further obligation therefore.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. Consultant shall be solely responsible for obtaining and maintaining all Authorizations and permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

d. Consultant shall not be obligated to perform work that would violate applicable law.

8. Standard of Care.

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant.

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor.

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the Scope of Services described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City 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 secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Consultant Liability

Covering all Consultant's officers and employees, for loss of City proceeds caused by dishonesty and/or theft. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Consultant in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information or personally identifiable information (PII), alteration of electronic information, extortion, and network security.

f. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Minimum Limit Requirements

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease

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and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

i. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance 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.

j. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

k. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

b. To the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's obligations under the above indemnity shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, but shall not otherwise be reduced. If Consultant's obligations to defend, indemnify, and/or hold harmless arise out of Consultant's performance of "design professional services" (as that term is defined under Civil Code section 2782.8), then upon Consultant obtaining a final adjudication that liability under a claim is caused by the comparative active negligence or willful misconduct of the City, Consultant's obligations shall be reduced in proportion to the established comparative liability of the City and shall not exceed the Consultant's proportionate percentage of fault.

c. To the fullest extent permitted by law, the City shall defend, indemnify, and hold harmless the Consultant, its officers, directors, employees, subcontractors, and agents from any and all claims, liabilities, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the negligent acts, errors, or omissions or willful misconduct of the City, its officials, officers, employees, or agents in connection with this Agreement.

d. Consultant's total liability for all claims under this Agreement, whether in contract, tort, or otherwise, shall not exceed six (6) million dollars or the twelve (12) month average revenue share to the City for the remainder of the Agreement term, whichever is greater, except for liability arising from Consultant's gross negligence or willful misconduct. In no event shall either Party be liable to the other for any indirect, incidental, consequential, special, or punitive damages arising out of or relating to this Agreement.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects ("Prevailing Wage Laws"). If the services 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 \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon

the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1).

b. If the services are being performed as part of an applicable “public works” or “maintenance” project and if the total compensation is \$15,000 or more for maintenance or \$25,000 or more for construction, alteration, demolition, installation, or repair, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant’s sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant’s performance of services, including any delay, shall be Consultant’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented persons, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. 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 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 for cause. All routine administrative communication between the Parties will be between the key personnel and may be made by personal delivery, physical mail delivery, or electronic mail delivery as agreed between the Consultant Representative and City Representative. The key personnel for performance of this Agreement are as follows:

a. The City hereby designates Chris Schultz, Deputy IT Director, or his designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant

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but not the authority to enlarge the Scope of Services or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Services or change the Consultant's total compensation subject to the provisions contained in this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

b. Consultant hereby designates Stephen Stukas, CEO, Smart Fiber Networks, or his designee, 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/her 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.

16. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Kern, State of California.

17. Early Termination For Convenience By City.

a. City has the right to terminate any portion or all of the work under this Agreement for convenience or without cause by giving sixty (60) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Further, if all of the work under this Agreement is terminated by City for convenience or without cause, Consultant shall provide the City all of the following:

(i) One hundred (100) percent of the documented capital investments made by the City for all network expansion project areas not yet completed;

(ii) Transfer all active Subscriber accounts, systems, and operational data to the City or a designated replacement provider in a commercially reasonable manner and at no cost;

(iii) Assist in a 90-day transition plan, beginning after the receipt of the sixty (60) calendar day written notice, to ensure uninterrupted service and minimize Subscriber attrition;

(iv) Waive any future claim to unrecovered expansion investments to offset the City's potential revenue losses;

(v) Transfer all appropriate documentation, permits, and pole access rights over to the City per the procedure described in Exhibit "B".

b. If City terminates any portion of the work, but not all of the work under this Agreement for convenience or without cause under paragraph 17(a), City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall

be the reasonable value of such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment from the City for unperformed services.

c. If the City terminates all of the work under this Agreement for convenience or without cause under paragraph 17(a), the City shall compensate Consultant with the following:

(i) The average of the City's prior twelve (12) months' revenue share entitlements multiplied by twelve (12);

(ii) One hundred (100) percent of the documented, unrecovered capital investments made by the Consultant for all outstanding network expansion project areas under an approved Consultant-Funded Expansion Adjustment (as outlined in Exhibit "B"). Consultant shall provide the City with an accounting of unrecovered capital expenditures at the time of termination, and the City shall submit payment within ninety (90) calendar days following receipt of such accounting. The calculation of unrecovered expansion investments shall include all documented costs for design, permitting, construction, materials, and related expenses associated with the expansion area.

18. Early Termination For Convenience By Consultant.

a. Consultant has the right to terminate any portion or all of the work under this Agreement for convenience or without cause by giving twelve (12) calendar months written notice to City. If the Consultant terminates this Agreement for convenience or without cause, the Consultant shall compensate and provide the City all of the following:

(i) One hundred (100) percent of documented capital investments made by the City for all network expansion project areas not yet completed;

(ii) Transfer all active Subscriber accounts, systems, and operational data to the City or a designated replacement provider in a commercially reasonable manner and at no cost;

(iii) Assist in a 90-day transition plan, beginning on a date set by the City after the receipt of the twelve (12) calendar month written notice, to allow the City time to arrange for and procure replacement services and ensure uninterrupted service and minimize Subscriber attrition;

(iv) Waive any future claim to unrecovered expansion investments to offset the City's potential revenue losses;

(v) Within sixty (60) calendar days from the date of receipt of such written notice, pay a fixed early exit fee equal to the average of the prior twelve (12) months' total subscriber revenues multiplied by six (6);

(vi) Transfer all appropriate documentation, permits, and pole access rights over to the City per the procedure described in Exhibit "B".

19. Termination for Cause and Other Remedies For Uncured Breaches.

a. Consultant may terminate its obligation to provide further broadband (ISP) services under this Agreement upon sixty (60) calendar days' written notice to City only in the event of an uncured substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

b. Default for Nonpayment by City.

In the event the City fails to pay any undisputed amount due under this Agreement within sixty (60) calendar days after receipt of a proper invoice, Consultant may, upon written notice to the City, suspend performance of services under this Agreement until all outstanding undisputed amounts have been paid in full. Consultant shall have no liability to the City, nor shall any performance penalties, service level penalties, or breach remedies apply, for any failure to perform services during any period of suspension caused by the City's nonpayment. Consultant's right to suspend services is in addition to, and not in lieu of, any other remedies available at law or in equity.

c. Default for Nonpayment by Consultant.

In the event of an uncured substantial failure by Consultant to perform in accordance with the terms of this Agreement through no fault of City, the City may, upon notice to Consultant, pursue any or all of the following remedies:

(i) procure or perform the cure and obtain reimbursement of the costs from Consultant;

(ii) terminate the Agreement;

(iii) terminate any portion of the Scope of Services and reduce the Compensation to account for the reduced Scope of Services;

(iv) pursue court ordered remedies in law or equity, including specific performance.

d. Cure Period Prior to Termination for Cause.

Notwithstanding anything to the contrary herein, prior to initiating any termination for cause under this Agreement, either Party seeking termination for cause shall provide the other Party with written notice specifying the nature of the alleged material breach. The breaching Party shall have sixty (60) calendar days from the date of receipt of such written notice to cure the alleged breach to the reasonable satisfaction of the non-breaching Party. Termination may not occur unless and until the sixty (60) day cure period has expired without a satisfactory cure.

e. Regardless which party terminates the Agreement for cause, the Parties shall at a minimum cooperate to (i) Transfer all active Subscriber accounts, systems, and operational data to the City or a designated replacement provider in a commercially reasonable manner and at no cost; (ii) Assist in a 90-day transition plan, beginning after the receipt of the written termination notice, to ensure uninterrupted service and minimize subscriber attrition; and (iii) transfer all appropriate documentation, permits, and pole access rights over to the City per the procedure described in Exhibit "B".

20. Ownership of Assets.

a. The City is the legal owner of the Shafter Network and all assets and equipment installed pursuant to this Agreement, except as specifically provided otherwise in Exhibit "B".

b. Consultant's Right to Bid on Offered Assets.

In the event the City elects, at any time during the Term of this Agreement or within twelve (12) months following its termination or expiration, to sell, transfer, assign, lease, or otherwise dispose of the Shafter Network or any substantial portion thereof (the "Offered Assets"), the City shall not prohibit the Consultant from offering a formal bid for such Offered Assets. Notwithstanding the foregoing, the City retains full authority and the sole discretion to define appropriate bidding criteria and evaluation factors consistent with the City's then-current bidding and procurement policy.

21. Documents.

Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

22. Organization.

Consultant shall assign Stephen Stukas as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

23. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above and within Exhibit "A" and Attachment No. 1.

24. Notice.

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of Shafter
336 Pacific Avenue
Shafter, California 93263
Attn: Chris Schultz

CONSULTANT:

Smart Fiber Networks, Inc.
400 Santa Clara St, Suite 100
Vallejo, CA 94590
Attn: Stephen Stukas

and shall be effective upon receipt thereof.

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25. Third Party Rights.

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

26. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

27. Entire Agreement.

This Agreement, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

28. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

29. Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

30. Non-Waiver.

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

31. Time of Essence.

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

32. City's Right to Employ Other Consultants.

City reserves its right to employ other consultants, including engineers and installers, in connection with the Project or other projects related to the expansion of the City's fiber optic network. In addition, Consultant will honor all previous Network Management Service

Agreements, Master Service Agreements, and Product Orders obtained by the City prior to this Agreement, until said contracts expire or are terminated.

Consultant enters into this Agreement with an understanding of and support for the development of an Open-Access Network and, as a result, additional Consultants, usually in the form of an internet service provider (ISP), may require access to certain CPE within the Shafter Network to provide broadband services.

33. Prohibited Interests.

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

34. Exhibits and Attachments.

The following exhibits and attachments are attached hereto and incorporated herein by reference:

Exhibit A, entitled "Scope of Services"

Exhibit B, entitled "Compensation"

Exhibit C, entitled "Other Network Expenses"

Attachment No. 1, entitled "Hourly Rates"

Attachment No. 2, entitled "Definitions"

Attachment No. 3, entitled "Performance Metrics and Data Sharing"

Attachment No. 4, entitled "Existing Shafter Network Assets"

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR CONSULTANT AND PROFESSIONAL SERVICES
AGREEMENT BETWEEN THE CITY OF SHAFTER
AND SMART FIBER NETWORKS, INC.**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF SHAFTER

SMART FIBER NETWORKS, INC.

Signed by:
By: *Lance Lippincott*
1EA96EF09C5E481...
Lance Lippincott
City Manager

DocuSigned by:
By: *[Signature]*
1A75C547F45845D...
Its: CEO

Printed Name: Stephen Stukas

ATTEST:

DocuSigned by:
By: *[Signature]*
571DD9F306124D5...
City Clerk

APPROVED AS TO FORM:

DocuSigned by:
By: Marco Martinez
6F4798C554DB4C4...
City Attorney

EXHIBIT A

SCOPE OF SERVICES

1. **Network Management Services.**

After execution of the Agreement, Consultant will provide network management services and operational support services as necessary to operate the Shafter Network as an ISP for the City of Shafter, including but not limited to:

a. Maintenance of, and all activities associated with, new Layer 1 installations, as well as Layer 2 and Layer 3 network management services.

b. Installation (wiring and construction) necessary to connect units from the connection panel in telecommunications room or demarcation point within the business premises for all future Subscriber connections.

c. Implementation of Network Operations Center (NOC) at agreed upon locations within the Shafter Network, including but not limited to:

(i) Materials, equipment, and labor associated with implementation of connection panel(s) within the necessary telecommunication room(s) throughout the Shafter Network;

(ii) Installation and ongoing maintenance of new handholes, vaults, or any other access points necessary to gain access to new equipment associated with the expansion of the Shafter Network per the Consultant-Funded Expansion Adjustment (as outlined in Exhibit B).

d. Consultant will, directly or through its existing arrangement with Atherton Fiber, LLC, at their expense, acquire a pole permit from the pole owner and acquire an agreement with the owner for pole use.

e. Consultant will ensure all new fiber optic cable installations be ITU-T G.652.D or better and all splices be of the fusion type. Splices shall have an optical attenuation of no more than 0.1 dB at both 1550 nm and 1310 nm.

f. Consultant shall be responsible for procuring, managing, operating, monitoring, and maintaining the Core Services on behalf of the City, including the selection of providers, bandwidth tiers, interconnection points, service upgrades, technical configuration, and ongoing vendor coordination. Final service provider contracts shall be subject to the City's prior written approval.

g. Consultant shall ensure that Core Services meet industry standards for reliability, redundancy (as available), and performance appropriate for the City's service delivery needs. Consultant shall monitor service levels and manage repair, maintenance, and escalation processes with third-party carriers on behalf of the City.

2. **Internet Service Provider for Broadband Services to Subscribers.**

Consultant will perform the services listed below as part of their responsibility as an internet service provider (ISP). If one or more of the services listed below need to be performed in phases or discrete increments, Consultant shall not proceed from one phase or increment to the next without written authorization from the City's Representative. Consultant will complete all services for the duration of the contract. Performance metrics are listed in Attachment No. 3.

a. Installation of fiber-to-the-home (FTTH) network equipment and infrastructure associated with connecting new Subscribers from the demarcation point to the Subscriber's connection panel;

b. Installation of fiber-to-the-premises (FTTP) network equipment and infrastructure associated with connecting new business Subscribers from the demarcation point to the Subscriber's connection panel;

c. Delivery of Broadband Access Services to Subscribers.

Subscriber Support Services.

(i) Provide a mechanism by website for new and existing Subscribers to view and make changes to their broadband services plan or account;

(ii) Provide a mechanism by telephone for new and existing Subscribers to view and make changes to their broadband service plan or account;

(iii) Provide a mechanism for existing Subscribers to report network outages, including a toll-free phone number for customer support.

(iv) Clearly advertise the monthly pricing associated with broadband access on the Subscriber website.

(v) Provide Subscribers with monthly bills, collect payments, and respond to billing inquiries.

d. Provide the City with the following information on a monthly basis as it pertains to their function within the Agreement as an ISP:

(i) A list of new Subscribers activated by Syber Fiber during the previous thirty (30) calendar days, including physical addresses and/or business names. Consultant will not disclose any Subscriber's Personally Identifiable Information (PII);

(ii) A list of terminated or deactivated Subscriber accounts by Syber Fiber during the previous thirty (30) calendar days, including physical addresses and/or business names. Consultant will not disclose any Subscriber's Personally Identifiable Information (PII);

(iii) A net Subscriber count, as of the last day of each month cumulatively;

(iv) A breakdown of all incoming monthly revenues from all broadband internet service Subscribers as defined in Exhibit B of this Agreement, from the Consultant, DBA Syber Fiber, or other outside contracted Service Providers. Monthly revenues are subject to the 60/40 revenue sharing provisions between the City and the Consultant.

(v) Any and all other information that the City may reasonably require. This information may include information on Subscriber counts and revenues generated by Consultant

from ancillary services not subject to the revenue sharing provisions of this Agreement. This information may only be used by the City for statistical purposes or for reporting requirements as necessary by law. Consultant will make every effort to not disclose Subscriber's Personally Identifiable Information (PII) without proper authority.

e. Installation, deployment, and ongoing maintenance of wireless access points, for Wi-Fi internet use by the City or the public, at no cost to the City or the general public. Once deployed, these public Wi-Fi networks will be maintained and operated by the Consultant as part of its ongoing network management services, ensuring consistent performance, security, and accessibility. The City will become a Subscriber for all agreed upon wireless access points, and be responsible for paying the associated monthly fee for broadband services to Consultant.

Wireless access points will be installed within or around, but not limited to, the following locations:

- (i) Public (City) parks: Mannel; Downtown Square; Stringham; Kirschenmann; Rodriguez; Veterans; Community; Farm; Flight; and the Shafter Skate Park facility.
- (ii) City buildings: City Hall; City Hall Annex; City Corporation Yard; Shafter Animal Shelter; Shafter Police Department; Shafter Library & Learning Center.
- (iii) City parking lots: Shafter Library & Learning Center.

EXHIBIT B
COMPENSATION

1. **Compensation to Consultant for Scope of Services Rendered.**

A. Share of Revenue Generated from Subscribers.

(i) **Revenue Share for Broadband Internet Services.**

City agrees to a shared revenue percentage from all monthly recurring broadband internet access service charges collected by Consultant. The revenue share split will be in a sixty (60) / forty (40) manner, with Consultant collecting all revenues, retaining sixty (60) percent as compensation, and paying the City forty (40) percent of said monthly revenues collected by the 15th day of the following month.

The Consultant reserves the right, with prior written notice to City, to deduct all monthly broadband fees billed to the City as a Subscriber from the City's monthly revenue share entitlement for that month. These broadband fees charged to the City as a Subscriber include FTTP broadband internet service to all City-owned buildings, and broadband services associated with the wireless access points provided to the public with City parks, buildings, or parking lots.

(ii) **Consultant-Funded Expansion Adjustment.**

Subject to the City's prior written approval, in the event that Consultant fully funds the capital expenditures required to expand broadband infrastructure into a new service area not previously covered under this Agreement, the revenue share for Subscriber services in the new service area only shall adjust to eighty percent (80%) Consultant and twenty percent (20%) City until Consultant has recovered its total documented capital investment (the "Payback Period"). Upon full recovery of the investment, as mutually certified by the Parties, the revenue share for that expansion area shall revert to the standard sixty percent (60%) Consultant and forty percent (40%) City split for the remainder of the Agreement term.

(iii) **Alternative Technology Deployment Adjustment.**

Subject to the City's prior written approval, if Consultant elects to utilize alternative last-mile technologies, including but not limited to fixed wireless, millimeter wave, or CBRS spectrum, and bears the associated deployment costs, the revenue share for those connections shall similarly adjust to eighty percent (80%) Consultant and twenty percent (20%) City until the Consultant recovers the documented capital expense. Upon recovery, the revenue share shall revert to the standard sixty percent (60%) Consultant and forty percent (40%) City for such connections.

B. Service Fees and No-Cost Access to Property.

(i) **Compensation to Consultant for Operating Services.**

a. City agrees to pay Consultant a total of \$495,000 (\$99,000 per year) for the initial term of the Agreement for all services related to the design, construction, maintenance,

operations, and commercialization for low-level engineering work performed on new and existing Shafter Network.

b. City agrees to provide the Consultant, at no cost, with access to City-controlled real property sufficient for use as a secure yard, warehouse, and temporary field office for the duration of the initial term of this Agreement. This space, located at 720 Commerce Way, Shafter, CA 93263, shall be suitable for storage of materials, equipment staging, and day-to-day ISP operational needs, and may include the installation of modular office or utility structures by Consultant, subject to mutual agreement on location and site coordination.

2. Expense Reimbursement to Consultant.

A. Reimbursable Expenses – General.

Reimbursable expenses shall be limited to actual reasonable expenditures of Consultant for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City, either in writing or verbally, if warranted.

B. Authorized Subscriber Installation Costs.

Consultant may bill the City for all authorized reimbursable expenses in connection with the installation of broadband internet access service at a Subscriber location, for a total not to exceed Five Hundred dollars (\$500.00) per customer location unless a higher amount is authorized in writing by City on a case-by-case basis.

C. Pole Attachment Fees.

City agrees to pay Consultant for pole attachment fees on a per-pole basis, as stated below:

(i) An initial one-time payment of \$198 per pole will be assessed and assigned the calendar year designation of “year 1” at the time a permit is established for use of that pole for the Shafter Network.

(ii) An additional \$19 lease fee and \$5 administrative/insurance fee, for a total of \$24 per pole that maintains a valid permit, will be charged by the Consultant and paid by the City on an annual basis beginning in calendar “year 2” of that pole being used within the Shafter Network.

(iii) Pole fees stated above will not change, unless the pole lease fees are increased by the pole owner (lessor) and those increases are presented to the City and approved in writing by the City representative thirty (30) days ahead of invoicing.

(iv) It is understood by the Parties that for regulatory compliance purposes, the Consultant shall retain legal ownership of all equipment installed on the poles. Notwithstanding such ownership, Consultant shall grant to the City exclusive operational use by way of an Indefeasible Right of Use (IRU) contract and beneficial rights to the installed equipment pursuant to the terms of this Agreement and any extensions thereof. The Consultant may not transfer, assign, or sell any ownership interest in the installed equipment except to the City or to another party designated in writing by the City.

(v) It is understood by the Parties that the Consultant, as a CLEC, will be responsible for transferring all appropriate documentation, permits, and pole access rights over to the City at the end of this Agreement or any extension of this Agreement herein termination of this agreement. The Parties acknowledge that the transfer process may require up to one (1) year to complete. During the transfer period, the Consultant shall not sell, transfer, or otherwise encumber the installed equipment except as directed by the City. The City shall remain responsible for all applicable fees and any costs associated with the transfer of ownership and permits.

3. Compensation for Additional Services.

A. Additional Services.

Consultant's compensation for Additional Services shall be based on the total number of hours spent on Additional Services multiplied by the employees' appropriate billable hourly rate as established in Attachment 1 of this Agreement. The City, at its option, may negotiate a fixed fee for some or all Additional Services as the need arises. Where a fixed fee for Additional Services is established by mutual Agreement between City and Consultant, compensation to Consultant shall not exceed the fixed fee amount.

B. Reimbursable Expenses.

Reimbursable expenses shall be limited to actual reasonable expenditures of Consultant for expenses that are necessary for the proper completion of the Services and shall only be payable if specifically authorized in advance by City, either in writing or verbally, if warranted.

4. Payments to Consultant.

(i) Payments to Consultant shall be made within a reasonable time after receipt of Consultant's invoice, said payments to be made in proportion to services performed. Consultant may request payment on a term other than twice a month, with written approval from the City representative ahead of the requested timeframe. Consultant shall be responsible for the cost of supplying all documentation necessary to verify the invoice amounts to the satisfaction of City.

(ii) Consultant agrees to invoice the City for services and expenses associated with the terms of this Agreement on a bimonthly (twice a month) basis. Consultant will inform City regarding out-of-scope work being performed by Consultant (if any) and will not include out-of-scope work in any invoice amount to the City. Consultant will be sure to separately invoice any work completed within the project area related to the City's Federal Funding Account Last Mile grant or any other grant awards herein. All invoices submitted by Consultant shall contain the following information:

1. Description of services billed under this invoice
2. Date of Invoice Issuance
3. Sequential Invoice Number
4. City's Purchase Order Number (if issued)
5. Taxpayer Identification Number (TIN)
6. Amount Invoiced (Itemize all Reimbursable Expenses)
7. Total Billed to Date

8. Detailed progress report that indicates the amount of budget spent on each task.

(iii) Items shall be separated into Services and Reimbursable Expenses. Billings that do not conform to the format outlined above shall be returned to Consultant for correction. City shall not be responsible for delays in payment to Consultant resulting from Consultant's failure to comply with the invoice format described above.

(iv) Request for payment shall be mailed to the address below or can be electronically submitted by emailing the following two email addresses – ap@shafter.com; cschultz@shafter.com.

Chris Schultz
Deputy IT Director
City of Shafter
720 Commerce Way
Shafter, CA 93263

4. **Accounting Records of Consultant.**

Consultant shall maintain for three (3) years after completion of all services hereunder, all records under this Agreement, including, but not limited to, records of Consultant's direct salary costs for all Services and Additional Services performed under this Agreement and records of Consultant's Reimbursable Expenses, in accordance with generally accepted accounting practices. Consultant shall keep such records available for audit, inspection and copying by representatives of the City's Finance Department or other government agencies during regular business hours upon twenty-four (24) hours' notice.

The obligations of Consultant under this section shall survive this Agreement.

5. **Taxes.**

Consultant shall pay, when and as due, any and all taxes incurred as a result of Consultant's compensation hereunder, including estimated taxes, and shall provide City with proof of such payments upon request.

6. **Taxpayer Identification Number.**

Consultant shall provide City with Consultant's complete Request for Taxpayer Identification Number and Certification, Form W-9, as issued by the Internal Revenue Service, and any other State or local tax identification number requested by City.

EXHIBIT C

OTHER NETWORK EXPENSES

1. **Internet Protocol Licenses.**

City agrees to purchase the required and necessary amount of Internet Protocol (IP) addresses in accordance with the low-level design and infrastructure needs in order to successfully implement all phases of the network expansion process.

2. **Core Network Access and Dedicated Transport Services.**

a. The City shall be responsible for funding and maintaining one or more Dedicated Internet Access (DIA) connections, or substantially equivalent high-capacity wave transport services (collectively, "Core Services") as required to provide core Internet connectivity for the Shafter Network.

b. The City shall directly enter contracts for Core Services with carriers or, at its option, authorize Consultant to procure Core Services and invoice the City for all actual costs incurred, including but not limited to installation fees, monthly recurring charges, taxes, regulatory fees, and carrier-imposed surcharges, without markup unless otherwise agreed upon in writing.

c. In the event the City fails to fund, maintain, or timely renew Core Services necessary for the operation of the Shafter Network, Consultant shall be excused from any performance metrics, service level obligations, or penalties arising from such deficiency to the extent it impairs Consultant's ability to deliver Services. Consultant shall not be liable for any loss, interruption, or failure to meet performance standards resulting directly from a lapse, underperformance, or failure of the Core Services not attributable to Consultant's actions.

ATTACHMENT NO. 1

HOURLY RATES

Any additional services requested by the city outside of customer interactions will be billed at Consultant's regular rates, outlined below.

Standard Smart Fiber Networks Rates		
Role Rates	Rate Type	Base Rate
Project Management (All Smart Fiber Networks Team)	Hourly	\$250.00
Project Coordinator	Hourly	\$175.00
Engineering/ Design	Hourly	\$250.00
2 Person OSP Field Crew	Hourly	\$100.00
2 Person Wireless Field Crew	Hourly	\$200.00
After Hours Troubleshooting	Hourly	\$175.00
Standard Splicer	Hourly	\$70.00
Standard ISP Technician	Hourly	\$50.00
Network Technician	Hourly	\$60.00
Prevailing Wage - Splicer	Hourly	\$90.00
Prevailing Wage - Technician	Hourly	\$62.00
Sales	Weekly	\$640.00

Rate Adjustments

The hourly rates listed herein are subject to an annual review and adjustment upon mutual written agreement of the Parties. Any such adjustment shall be made in good faith and may consider inflation, labor cost changes, market conditions, or changes in the scope of services.

ATTACHMENT NO. 2

DEFINITIONS

“Access Agreement” means the written agreement between an owner of Premises and the City pertaining to the connection of the Premises to the Shafter Network, and granting a right of access and occupation to the City and/or Consultant sufficient to enable the installation and maintenance of Shafter Network and/or Consultant facilities on the Premises.

“Agreement” means this Agreement, any and all Exhibits and Attachments thereto, and any Addenda or written amendments to which the Parties may agree from time to time.

“Assets” means the dark fiber strands and Outside Plant associated with the Shafter Network and managed by the Consultant under this Agreement, as specified in Exhibit A.

“Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation or use of tangible or intangible property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

“Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind relating to a Party’s execution of its obligations under this Agreement, whether imposed by a governmental authority or a private entity.

“Core Services” means services related to one or more Dedicated Internet Access (DIA) connections, or substantially equivalent high-capacity wave transport services, as required to provide core internet connectivity for the Shafter Network.

“Customer Premises Equipment” (“CPE”) means terminal and associated equipment and inside wiring located at a Premises that is necessary for the receipt of Services, and which is provided and installed by Consultant.

“Dark Fiber” means fiber optic cable strands without electronic and/or optronic equipment and which is not "lit" or activated.

“Effective Date” means the date upon which this Agreement has been executed by the Parties and is approved by the City, per the approval of the City of Shafter and a vote of approval of the Council of the City of Shafter.

“FTTH” means fiber to the home. Represents infrastructure and service connections specifically associated with bringing broadband service to a homesite or private residence.

“FTTP” means fiber to the premises. Represents infrastructure and service connections associated with bringing broadband service to any location, including a place of business, worship, etc.

“Maintenance” means work that must be performed upon or to the Shafter Network, including Assets, to ensure the continuity of an acceptable signal transmitted through the fibers (in conformance with the manufacturer’s specifications), and capable of enabling the Consultant and other ISP’s operating upon the Shafter Network, to meet the Performance Metrics, or to ensure the safety and reliability of the Assets.

“Network Operator” means Consultant’s role in (i) configuring and activating a community fiber network utilizing the Shafter Network, and (ii) providing data/IP transport services to unrelated Service Providers on a nondiscriminatory basis.

“Optical Network Terminal” / “ONT” means a device that performs interface functions, such as code conversion, protocol conversion, and buffering, required for communications to and from an optical fiber network.

“Outside Plant” means equipment and structure owned by the City that is used to house or support Shafter Network fiber optic cable, to which Consultant is granted a nonexclusive right to use under this Agreement.

“Open-Access Network” means a specialized and focused fiber network business model, in which the network infrastructure provider limits its activities to a fixed set of value layers in order to avoid conflicts of interest. The network infrastructure provider creates an open market and a platform for internet service providers (ISPs) to add value. The Open Access provider remains neutral and independent and offers standard and transparent pricing to ISPs on its network. It does not compete with the ISPs

“Premise” means a residence, commercial building, multi-dwelling unit (MDU), or buildable lot that can be feasibly and reasonably served by the Shafter Network. In cases where a single structure may require multiple connections to serve separate customers within the structure, each connection to an Optical Network Terminal (ONT) will count as an individual Premise.

“Route” means the physical path traversed by the fiber strands that are specified as Assets in Exhibit A, as set forth in applicable maps and related documents that are made a part of this Agreement.

“Service” means any retail communications service offered and provided using the Shafter Network and the Assets, whether by the Consultant or another Service Provider, including but not limited to broadband Internet access service, and Voice Service.

“Service Provider” means a provider of retail Services, to which the Consultant provides data transport services using the network infrastructure owned by the City of Shafter.

“Shafter Network” means the new and existing network infrastructure owned by the City necessary for delivering any broadband internet access service by the Service Provider, including those associated with the City’s forthcoming branded public access website.

“Subscriber” means a business or residential customer of retail Services provided by a Service Provider. The term “customer” may be used interchangeably within this Agreement.

“Voice Service” means interconnected VoIP service, as such term is interpreted by the Federal Communications Commission, or its substantial equivalent.

ATTACHMENT NO. 3

PERFORMANCE METRICS AND DATA SHARING

1. Performance metrics for Consultant are outlined as follows:
 - a. Consultant support performance: Consultant will strive to answer all inbound customer phone calls within 90 seconds, and all inbound emails within 24 hours.
 - b. Consultant maintains that all fiber shall be ITU-T G.652.D or better. All splices shall be of the fusion type; and splices shall have an optical attenuation of no more than 0.1 dB at both 1550 nm and 1310 nm.
 - c. Consultant shall perform optical performance tests:
 - (i) for all City fiber installed under this agreement with the City; and
 - (ii) to verify that fiber is correctly spliced and installed when the City requests its activation.

Upon construction, testing shall be performed over continuous stretches of the spliced fiber to validate the optical performance of the length of all the City fiber strands. Testing shall be unidirectional OTDR testing. Upon the City requesting use of City fiber, testing shall be performed to verify that fiber splicing has occurred according to fiber routing plans. This testing will consist of bi-directional OTDR testing, as well as direct optical attenuation and continuity testing using a calibrated optical source and power meter. Consultant shall provide a test result template for City review and approval before testing begins. Consultant shall provide the City with electronic documentation of all test results.

- d. Testing shall be deemed successfully completed if:
 - (i) maximum fiber losses meet manufacturer specifications, with an allowance for splices and connectors;
 - (ii) individual splice losses do not exceed 0.1 dB; and
 - (iii) maximum mated connector losses do not exceed manufacturer specifications.
- e. Testing will be performed by Consultant personnel and may be observed by the City or its designated representative. The City may request and/or perform additional testing to verify results prior to accepting test data.
- f. An OTDR shall be used to measure and document splice losses and connector losses.
 - (i) To correctly identify abnormalities at a short range, a 100-meter or longer launch cable shall be used between the OTDR and the fiber under test.
 - (ii) Each fiber will be identified, and the results of the test for each fiber will be recorded as indicated below.
 - (iii) The test will be repeated for each of the fibers linking a particular site. All tests will be made at 1310 nm and 1550 nm.
- g. All data collected at each location during the tests shall be recorded at the time of the tests using electronic means. Optical power meter measurements shall be made when the City is activating City fiber strands, at the same time as the OTDR tests, to determine overall fiber loss and to ensure that fibers have appropriate end-to-end continuity (fibers not crossed). Power

meter testing shall be performed at both 1310 nm and 1550 nm and Consultant shall report the relative loss of each fiber strand.

h. Consultant shall provide the City as-built documentation for all communications infrastructure once the network design is completed and before final acceptance by the City.

(i) Consultant shall provide georeferenced map files, such as GIS shapefiles, that indicate fiber routing, splice enclosures, fiber counts, and designation of aerial or underground construction.

(ii) Engineering as-built drawings shall be provided showing building entrances and inside wiring at each City facility.

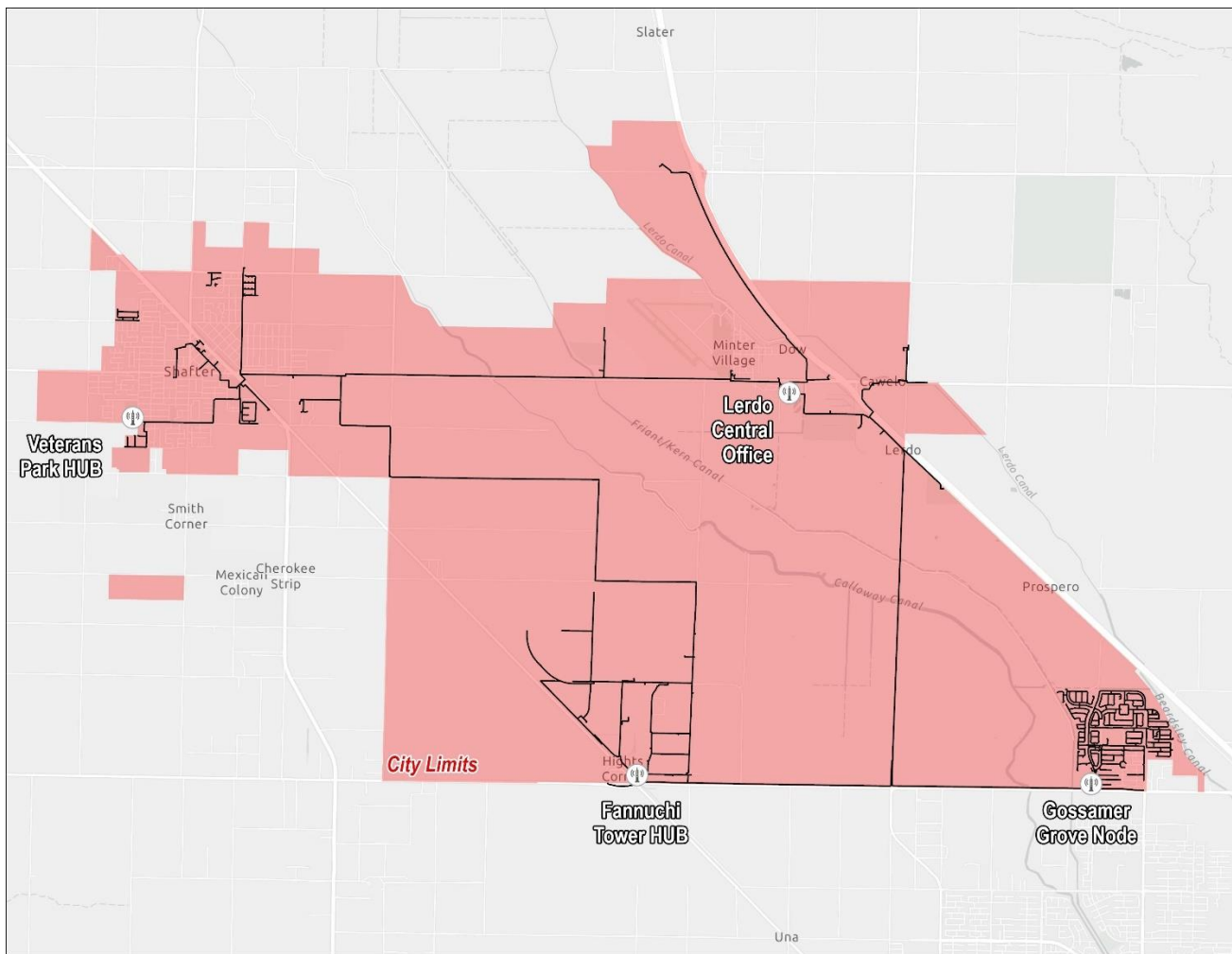
(iii) Consultant shall provide as-built documentation of any changes in the network during the term of the agreement. Upon request from the City, Google KMZ files may be provided by Consultant for all as-built fiber routes.

ATTACHMENT NO. 4

EXISTING SHAFTER NETWORK ASSETS

The Assets in which Consultant shall have a non-exclusive right of use and obligation to maintain and operate under this Agreement are partially described in the table below. This attachment may be referenced and amended by the Parties from time to time in writing, with signatures by both Parties, in order to include or remove assets or colocation spaces that are vital to network operations. Examples of such Assets may include, but are not limited to: network facilities, rental/lease space for office use, additional fiber nodes or access points, existing City structures not yet associated with existing network infrastructure.

As of the effective date of this Agreement, the City currently owns, operates, and maintains approximately 40 miles of underground fiber optic cable, conduit, enclosures, and structures associated with the Shafter Network. The City's conduit network currently stretches approximately 510,000 linear feet and consists of primarily 2-inch or 4-inch conduit sizing. Conduit depth standard within the existing Shafter Network is 36 inches below grade, with most conduits installed between 32- and 40-inch depths at time of installation. A map of the current Shafter Network backbone path and the four distribution hub sites associated is provided below.



As of the Effective Date, Assets include the following existing municipal infrastructure comprising the Shafter Network:

- Any City owned conduit, cable, vaults, enclosures, cabinets, and physical structures within the Shafter Network that are necessary for the expansion of the Shafter Network as it relates to the terms of this Agreement.
- Access to the following City owned facilities within the Shafter Network that are necessary for the expansion of the Shafter Network as it relates to the terms of this Agreement:

Location Name	Address	Equipment
City Hall	336 Pacific Ave	Network equipment room
City Hall Annex	337 State Ave	Network equipment room
Police Department	201 Central Valley Hwy	Network equipment room
Public Works Corp Yard	720 Commerce Way	All network assets owned by City
Shafter Library & Learning Center	236 James St	Network equipment room
Veterans Park Fiber HUB	500 W Los Angeles Ave	Network equipment room
Fanucchi Tower Fiber HUB	4451 Fanucchi Way	All network assets owned by City
Lerdo Central Office	5821 E Lerdo Hwy	All network assets owned by City
Animal Control Facility	18849 S Shafter Ave	Network equipment room
Modified Community Correctional Facility (MCCF) – <i>not in use</i>	1150 E Ash Ave	Network equipment room
Gossamer Grove Fiber Node	3851 Gossamer Grove Blvd	All network assets owned by City
Community Park utility closet	9210 Cobble Creek Dr	Network equipment room