

**The Core Smart-Net Fiber System Fiber Development Agreement Summary
of Terms Agreed to by the South Bay Cities Council of Governments
("SBCCOG" or "COG") and American Dark Fiber ("ADF")**

Proprietary & Confidential

June 10, 2019

Purpose of the Agreement	The terms described herein outline the general terms, conditions, pricing, routing and timelines associated with the Smart-Net RFP and subsequent ADF Design and cost proposal to provide a dedicated fiber-optic network that interconnects COG member cities, certain affiliates, and two data-center internet supply nodes. The terms outlined herein are intended to form the basis of a binding Letter of Intent ("LOI") to be executed by the parties.
Fiber Route	Please see the attached map of the general route to be provided by ADF
Fiber Route & Route Description	The route includes nearly 100 route miles of fiber miles that will be able to interconnect the fifty-two (52) nodes requested by the COG that have touch points to, minimally, all city halls, certain member city data centers, <u>other critical buildings</u> , and an additional two (2) data centers (located in El Segundo and Hawthorne). <u>There are additional buildings identified which must be connected. (See "Contract Site Lists", below.)</u>
Diverse Ring System	The system provided by ADF will include an underlying "ring" that serves as a protection against potential system outages in the event of network cuts or other catastrophic events that protect the availability of the network via diverse routing so that maximum availability of the network is attained.
System Capital ("NRC") Core Ring Development Costs (\$2,541,315.203,848,470.80)	The fiber network is comprised of two "capital cost" categories as revised by ADF on 1/22/19 (upon completion of site survey project): 1. \$2,541,315.20 : The Core SmartNet system (ring plus fiber extensions in the ROW to reach the curb of the fifty-two (52) buildings identified, and 2. \$1,305,155.69 : The building lateral connections which are the extensions required to interconnect each building to the SmartNet system that has an in-building termination point (as estimated from the detailed site surveys conducted from 12/19/18-1/21/19).
System Capital ("NRC") Lateral Development Costs (\$1,305,155.69)	1. \$1,305,155.69 : The building lateral connections which are the extensions required to interconnect each building to the SmartNet system that has an in-building termination point (as estimated from the detailed site surveys conducted from 12/19/18-1/21/19).
Anticipated Deployment Interval	ADF anticipates an approximate 9-month construction interval (subject to permitting, hidden construction conditions, etc.), <u>assuming an executed contract, measured from notice to proceed</u> for the project to be deployed. A 9/1/2019 contract execution date would expect a 6/1/2020 system delivery.
Anticipated NRC Progress Payment Timing Schedule	Upon a formal contract being executed by the parties, ADF will require progress payments to be made at the following intervals: -Execution of the agreement: 33% of the core Smart-Net ring NRC or \$1,269,995.30838,634.04 -Project Mid-Point: 33% of the core Smart-Net ring NRC or \$838,634.041,269,995.30 (i.e., 50% of the ring and initial buildings constructed or some other mutually agreed upon metric)

Commented [JC1]: 3x 1/3 payments for core ring.
SBCCOG will not necessarily have 52 (or 55) sites by contract signing.

Commented [JC2]: Lateral costs (construction, electronics) paid as completed.

Commented [JC3]: See later sections.

	<p>-Core ring completion: 34% of core Smart-Net ring NRC or \$864,047.20 to be paid upon ADF providing <u>core ring project close-out packages and acceptance testing documentation.</u></p> <p><u>- NRC for lateral connections and electronics billed monthly (or quarterly) to SBCCOG as completed. Appropriate product closeout and acceptance testing documentation will be required.</u></p>
Deposit Needed to Secure Current Pricing	ADF requires a \$100,000 deposit from the COG to extend current pricing beyond June 30, 2019. This is a non-refundable deposit made to allow ADF to obligate itself to certain cost outlays to secure contractual construction rates, fiber segment acquisition pricing, engineering expenses, etc. that pertain to the proposed system. The deposit allows for pricing to be maintained through August 31, 2019, during which time the parties agree to make best efforts to finalize and execute a formal contract memorializing terms described herein this LOI and for other standard contract requirements. <u>The Deposit will be credited against the first core Smart-Net ring progress payment.</u>
Initial Term Length and Lower Price Adjustment	3-Years with <u>4x 3-year</u> Renewal Options. ADF will provide modified (lower) initial pricing so that the previous 5-year/55-building pricing thresholds offered will be provided on the three-year contract term length.
Pricing	ADF/RACE team will offer the basic service of 1Gb of IP (internet) bandwidth for \$1,000.00 per month. Other service levels are available per our RFP response (i.e., 2Gb, 10Gb, or similar speed transport services). <u>Once a monthly revenue level of \$55,000.00 is obtained the basic service of 1Gb will drop to an effective rate of 950.00 per month. ADF requires a guaranteed minimum of \$35,000 in revenue per month upon delivery of the system.</u>
<u>NRC Billing</u>	<u>ADF will bill SBCCOG for NRC costs.</u>
<u>MRC Billing</u>	<u>ADF will bill individual cities and sites for lit services once services turned up. Monthly billing summaries for site services, sorted by member city and/or other entity, will be sent by SBCCOG.</u>
<u>New Revenue Source to COG for Non-COG Building Connections</u>	ADF anticipates selling circuits to others that fall outside of the COG membership pool and/or COG-affiliates (i.e., anchors, quasi-government agencies, approved NGO's, etc.). ADF/Race will charge all non-COG – affiliate customers a \$50.00 “recovery fee” that will be paid out by ADF/Race to the COG monthly. This recovery fee would augment the revenue share fee defined in the RFP. The COG could use funds generated as it deems fit.
<u>Network Augmentation</u>	<p><u>Should Other Entities (e.g. Mox) choose to augment the network by adding additional strands to the core Smart-Net ring, ADF will pass through 35% of Other Entity’s MRC for core ring as a credit to minimum MRC pricing. (For example, a \$25K additional strand charge to Other Entity will provide an MRC core ring credit of \$8,750 against minimum pricing.)</u></p> <p><u>Should Other Entities simply join the network, there is no additional credit.</u></p>
<u>Contract Site Lists</u>	<u>SBCCOG will provide ADF with complete initial site list of addresses to be connected to the ring by not later than September 1, 2019. Final initial service site list will be set by March 1, 2020, after ADF sales efforts complete.</u>
<u>Sales Support</u>	<u>ADF will support sales efforts to SBCCOG member cities and other entities from the date of the Letter of Intent through January 1, 2020. Counts of committed sites, and resultant revenues from those sites as a result of these sales efforts, will be accounted toward committed monthly site and revenue goals.</u>

[See Attached Map of General Routing for the Smart-Net System]

Commented [JC4]: I think the 3x one-third payments should be for the core ring, and payments for laterals and CPE electronics, as completed.

This was ambiguous in the June 6 meeting, but I see no reason why SBCCOG should commit to payments for the entire NRC until sites are finalized.

Once site laterals and electronics are completed, payment in full seems fair.

Commented [JC5]: Deposit payment tied to issued letter of intent?

Commented [JC6]: Is the \$950 MRC now a floor?

What happened to \$900, to \$800, to ...?

How does this affect regular price review schedules outlined in RFP? ADF had earlier agreed to initial price review at 3-year cycle and, if memory service, annually thereafter.

Commented [JC7]: I understand the words.

I don't understand who pays the difference in the event of a shortfall below \$35K based on committed sites.

This LOI implies SBCCOG but the mechanics and the obligations are not clear.

As ADF sales support was offered and accepted, there needs to be a checkpoint, especially if shortfall from 35 / 55.

Commented [JC8]: Details in RFP govern, otherwise.

When RFP was issued, we did not have a funding source for NRC. We should call out billing directly to SBCCOG.

Commented [JC9]: The recovery fee is paid to SBCCOG monthly; that is clear.

Is the recovery fee for non-SBCCOG affiliates recurring and earned monthly? Or one-time.

Not clear at all. Could be significant.

Commented [JC10]: Recovery fee in addition to 1.5% revenue share??

DRAFT

