

MFS COMMUNICATIONS COMPANY, INC.

999 OAKMONT PLAZA DRIVE, SUITE 400
WESTMONT, ILLINOIS 60559
TEL. (708) 986-2501
FAX (708) 986-2552

Kevin O'Hara
PRESIDENT, DEVELOPMENT

August 9, 1994

VIA FACSIMILE

Mr. Norman Y. Herring
City Attorney for Culver City
4095 Overland Avenue
Culver City, CA 90232

Re: Amendment to Culver City/MFS agreement

Dear Norm:

On or about May 23, 1994, the City Council of Culver City amended the Agreement between Culver City ("City") and Metropolitan Fiber Systems of California, Inc. d/b/a Metropolitan Fiber Systems of Los Angeles, Inc. ("MFS"), dated December 13, 1993. The purpose of this letter is to confirm in writing the understanding between the two parties relative to this amendment passed by the Council.

MFS will install 6 innerducts within the portion of the Mobil pipeline passing through the City, as more fully described in the original Agreement, with MFS' use of the pipeline terminating at a point located at Green Valley Circle and Centinela Blvd (where it leaves the pipeline while still within the City limits). As detailed in the Agreement, the City will give MFS an exclusive Indefeasible Right of Use ("IRU") to two innerducts (one containing MFS' cable) for its network. The City shall have the right to use the remaining four innerducts on the terms more fully described in said Agreement. It is MFS' understanding that two of the City's innerducts will be leased or otherwise used by the City of Los Angeles for its internal purposes. MFS chooses not to exercise its right of first refusal under the Agreement.

It is also MFS' understanding that the City will have access to capacity within the City of Los Angeles' fiber in MFS' cable, pursuant to a separate agreement between the City and the City of Los Angeles. MFS consents to such use by the City, so long as it is for internal purposes only.

The parties acknowledge that, under the laws of the State of California, MFS requires only normal construction permits to occupy the public rights-of-way of the City and the payment of fees associated with the excavation within the public rights-of-way.

CONFIDENTIAL
CONFIDENTIAL

SCANNED

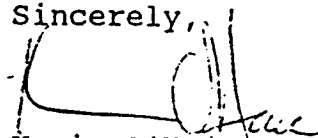
Nonetheless solely for the purposes of said Agreement and this amendment, when MFS constructs outside the pipeline in public rights-of-way as described in the Agreement, MFS will provide the City (at no additional cost to the City) two innerducts from the point MFS constructs its network leaving the pipeline to the border of the City (1,400 linear ft. ±). Said innerducts shall be full compensation to the City for MFS' excavation within the public rights-of-way (exclusive of construction permits), and for all additional assistance MFS receives from the City in obtaining such construction permits. If in the future MFS constructs additional cable or conduit, or expands its system in public rights-of-way of the City, the parties agree MFS will compensate the City for construction permits and use of City rights-of-way as provided by law.

All other provisions of the original Agreement shall be incorporated herein and remain in full force and effect.

If this amendment is consistent with the Council's approval, and is therefore agreeable to the City of Culver City, please indicate your concurrence below.


If you have any questions, feel free to contact Larry Berent at (708) 986-2505.

Sincerely,


Kevin O'Hara

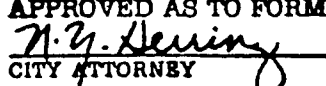
APPROVED FOR CULVER CITY

By:


Title: MRS. JODY HALL-ESSER
CHIEF ADMINISTRATIVE OFFICER

cc: Larry D. Berent
Lynn Refer
Jodi Caro

APPROVED AS TO FORM


CITY ATTORNEY

MFS COMMUNICATIONS
COMPANY, INC.

AGREEMENT

THIS AGREEMENT made this 13th day of December, 1993 by and between Culver City ("City"), a municipal corporation of the State of California, and Metropolitan Fiber Systems of California, Inc. d/b/a Metropolitan Fiber Systems of Los Angeles, Inc. ("MFS"), a Delaware corporation.

RECITALS

The City is in the process of accepting from Mobil Oil Corporation ("Mobil") title and possession to an oil pipeline ("pipeline"), which Mobil is abandoning and which traverses approximately three miles within the City and through adjoining jurisdictions. The transfer of the pipeline and adjacent rights-of-way within the City, which is a condition of Mobil's franchise with the City, will be made by quitclaim deed from Mobil to City after the pipeline and surrounding land is inspected and cleaned to the City's specifications.

The City desires to make the best use of the pipeline as a resource for the citizens of Culver City. MFS has been granted a Certificate of Public Convenience and Necessity by the California Public Utilities Commission and currently operates a fiber optic telecommunications system within the metropolitan Los Angeles area. MFS desires to expand this system into additional areas within Culver City and nearby jurisdictions. The parties have agreed that the interests and objectives of both will be best served by MFS constructing a fiber optic telecommunications system and appurtenances within the pipeline under the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and undertakings contained herein, the parties agree as follows:

1. MFS shall be permitted to construct and test a fiber optic telecommunications

system ("System") within the portions of rights-of-way being quitclaimed from Mobil to the City as shown on the map (Exhibit "A") attached hereto and made a part hereof and in a detailed description (Exhibit "B"), which is attached hereto and made a part hereof. Prior to construction but after acceptance of the pipeline as provided in paragraph 8 below, MFS at its sole expense shall prepare the pipeline for construction of the System. The System shall consist of two one-inch innerducts, with one of the innerducts containing a fiber optic cable ("Cable"), as well as splice junctions, manholes and other appurtenant equipment within the pipeline and rights-of-way required to operate the System, and shall be constructed along the general specifications (Exhibit "C") which is attached hereto and made a part hereof. The detailed technical specifications and methods of construction shall be submitted in writing by MFS to the City for its review at least fourteen (14) days prior to the construction start date. All specifications and methods shall conform to requirements stated in permits required by the City and issued to MFS or its contractors for construction of the System. All costs of design, construction, and permitting of the System shall be paid by MFS.

2. The City represents that, to its knowledge after due inquiry, at the time preparation for construction begins, the rights-of-way franchised by Mobil will be free of encumbrances sufficiently to permit MFS to construct, test, operate and maintain the System. The City grants to MFS non-exclusive access to the rights-of-way, and appurtenances under its jurisdiction for ingress and egress, as needed to construct, install, test, operate and maintain the System.

3. (a) Upon completion of construction and testing of the System, MFS shall transfer to the City title to the two innerducts. The City shall immediately grant to MFS an exclusive Indefeasible Right of Use ("IRU") to the innerduct within the pipeline containing the cable, as well as to those portions of the pipeline and rights-of-way

necessary to contain the splice junctions, manholes and other appurtenances of the System. The IRU shall be for a period of 20 years. MFS may renew this IRU for an additional 20 year term, on the same terms and conditions (subject to good faith renegotiating of compensation with the City), provided (i) it is not in default on a material provision of this Agreement, and (ii) it gives the City a minimum of 90 days written notice of its intention to renew its IRU.

(b) MFS shall retain title to the Cable and its appurtenances.

(c) The City shall have the right to sell or lease the remaining innerduct to non-City third-parties, companies or entities; provided (i) the City does so in a manner and at a price that does not create a competitive disadvantage to MFS, and (ii) the City provides MFS the right of first refusal to purchase or lease said innerduct on the same terms and conditions negotiated with the third party, company or entity. However, said right of first refusal must be exercised within fifteen (15) business days of City's transmission of the written offer from the City by courier, certified mail, or next day mail service. If the right of first refusal is not exercised by MFS, but MFS determines that the terms contained in the written offer received from the City will competitively disadvantage MFS, then MFS shall have 15 business days from City's transmission of the offer to so notify the City. The City shall have 10 business days to respond.

(d) Transfer of title to the City of the innerducts, as described above, shall immediately occur upon completion of construction and testing of the System to specification standards herein, whether or not the parties have executed any additional documentation to formalize such transfer.

4. MFS prior to commencing construction, shall pay the City a one-time fee of \$52,500 as compensation for the initial term of the IRU for the use of the innerduct.

5. MFS shall be solely responsible for obtaining any necessary franchises, licenses and permits from state, county or other municipal authorities, if necessary, to install and maintain the System within City rights-of-way. The City shall process such application consistent with the then existing policies and practices.

6. Prior to MFS' construction of the System and the City's obligation to grant the IRU, the City agrees to:

(a) Provide all available documentation from Mobil that the rights-of-way being quitclaimed to the City are sufficiently free of all hazardous substances and materials (including petroleum products) to meet environmental standards contained in current federal and California environmental laws, more fully described in 16 (a) below.

(b) Obtain from Mobil any available written documentation of all known leaks from the pipeline and spills of hazardous substances or materials along the rights-of-way which have been reported to federal, state and local agencies. Copies of all reports and exhibits to said agencies shall be attached to the documentation or be made available to both parties for review and photocopying during normal business hours.

(c) Provide all available documents from Mobil to MFS, that reflect: (i) written assurances that the pipeline and adjacent rights-of-way have been sufficiently remediated to comply with all applicable existing federal and state environmental laws, rules and regulations, and (ii) any written indemnification that Mobil has given to the City for "hazardous substances" (including petroleum products) existing in the pipeline up to the time of transfer to the City, as defined by applicable environmental statutes, rules and regulations. MFS may request that such indemnification shall extend Mobil's responsibility to successors and assigns of the City, as well as to other users or

licensees of the pipeline and franchised rights-of-way.

(d) Obtain from its own records all available reports of leaks from the pipeline and spills of hazardous substances or material along the rights-of-way which have been reported to its agencies. Copies of all reports and exhibits to said agencies shall be made available to MFS for its review and photocopying during normal business hours.

7. Prior to MFS' construction of the System and the City's obligation to grant the IRU, MFS at its own expense agrees to search the public records of the appropriate state and federal agencies to determine if Mobil or any other entity has reported hazardous substances or materials (including petroleum products) being spilled along the pipeline rights-of-way pursuant to the statutes described in paragraph 16 (a) below. Copies of all reports and exhibits to said agencies shall be made available to the City for its review and photocopying during normal business hours.

8. (a) Each party shall use its best efforts to obtain the information described in paragraphs 6 and 7 above. However, except for the records described in paragraph 6 (d), neither party warrants the accuracy or completeness of the records, exhibits or other documents obtained from Mobil, outside governmental agencies or other entities. Either party may employ outside or independent consultants to analyze these documents and information, and may share with the other party the results of their analysis. However, any party providing written copies of such analysis does not warrant to the other the accuracy or completeness of the analysis. Any party receiving such written analysis is responsible for determining the accuracy or completeness of the information it receives from the consultants or from any other source.

(b) After obtaining and analyzing the information and documents described

in paragraphs 6, 7 and 8 (a), and prior to commencement of construction, if either party determines solely in its own judgment that the potential environmental liability it would assume under this Agreement is for any reason against its best interests, it may terminate this Agreement immediately by informing the other party in writing of its intention to do so. Each party shall be responsible for all costs it has incurred through the date of termination and shall not be obligated to the other party for any other reason, unless otherwise agreed in writing by the parties.

9. (a) MFS at its sole expense shall maintain and repair its innerduct and its fiber optic cable, manholes, splice junctions and other appurtenances. MFS shall maintain such System at all times in a safe condition, in good repair and in conformity with the specifications of the National Electrical Safety Code, the National Electrical Code and all other applicable ordinances, statutes, regulations and laws.

(b) MFS at its sole expense and as agent for owner, the City, shall (i) maintain and repair the pipeline as necessary to protect the innerduct. Should any other party, including the City, make any use of the pipeline the costs of maintenance and repair shall be prorated between the parties based on percentage of usage, and (ii) maintain and repair its innerduct and any fiber optic cables and appurtenances within its innerducts or attached thereto. In the event the City leases, sells or otherwise disposes of all or part of its interest in its innerduct, the City agrees to require (at a minimum) the same construction, maintenance and permitting requirements on the company or other entity obtaining such interest as imposed upon MFS, the purpose being to maintain the operational integrity of the City's and MFS' facilities. Upon request by MFS, the City shall provide MFS written documentation that this requirement has been made.

10. (a) MFS shall be deemed to be in default on this agreement:

(i) If it fails to perform any material obligation imposed upon it by this Agreement or any applicable law to the detriment of the City; or

(ii) If any representations made herein by MFS prove to be fraudulent or materially false; or

(iii) If it fails to obtain governmental permits or approvals necessary for the construction, operation or maintenance of the System; or

(iv) If it is adjudged bankrupt or seeks relief under the bankruptcy laws.

(b) The City shall be deemed to be in default of this Agreement:

(i) If it fails to perform any material obligation imposed upon it by this Agreement or any applicable law to the detriment of MFS;

(ii) If any representations made herein by the City prove to be fraudulent or materially false.

(c) Neither party shall be in default under this Agreement or in breach of any provisions thereof unless and until it has been given written notice of such default by the other party and shall have failed to cure such default within a reasonable period of time after receipt of such notice. Where a default cannot reasonably be cured within a 30 day period, if the defaulting party shall proceed promptly to cure the same and prosecute such curing with due diligence, the time for curing such default shall be extended for such period of time as may be necessary to complete such cure. Upon the failure to cure any such default within 30 days after notice thereof or within 30 days plus the extension for curing with due diligence as set forth above, the party giving notice of the default may thereupon terminate by providing written notice of

termination. Upon default by either party, the non-defaulting party shall have the right to pursue any or all remedies available at law and equity.

11. MFS shall have the right to abandon operation of the System upon 90 days written notice to the City. At its sole option, the City may either (i) require MFS to abandon the System in place; or (ii) require MFS to remove the System and abandon the innerduct in place. If MFS is requested to remove the System but has not done so within 180 days of written receipt notice from the City, the City at its sole option may remove the System and require that MFS reimburse the City for all actual and documented costs incurred by the City. At the time this Agreement or the IRU is terminated for any reason, City shall assume full responsibility for maintenance of the System and all the pipeline, and shall release MFS from its obligation to maintain the System, except as indicated in MFS's duty to remove or reimburse the City for removal of the system.

12. If either party provides confidential information to the other in writing and identified as such the receiving party shall protect the confidential information from disclosure to third parties with the same degree of care afforded its own confidential and proprietary information, except that neither party shall be required to hold confidential any information which becomes publicly available other than through the recipient, which is required to be disclosed by a governmental or judicial order, which is independently developed by the disclosing party or which becomes available to the disclosing party without restriction from a third party. These obligations shall survive expiration or termination of this Agreement for a period of two years.

13. MFS shall not assign, transfer or sublet any of the privileges described in this Agreement without the written consent of the City, said consent not to be unreasonably withheld or unduly delayed; provided that MFS may assign, transfer or sublet its rights

hereunder to an affiliate, subsidiary or parent company without consent of the City.

14. MFS shall indemnify and save the City harmless from any and all costs, claims and expenses as a result of damage or injury to persons or property which might result from this installation or by reason of any act of negligence of the agents or employees of MFS while engaged in the work of placing, maintaining, relocating, replacing, renewing or removing the System or any appurtenant equipment, unless the damage or injury is caused by the negligence or willful act of the City, its agents, contractors, agencies or employees. ~~In no event shall MFS be liable to the City for any consequential, incidental or special damages incurred or alleged to have been incurred by anyone.~~ *deleted by Council NY # 12-2943*

15. The City shall indemnify and save MFS harmless from any and all costs, claims and expenses as a result of damage or injury to persons or property which might result from this installation or by reason of any act of negligence of the agents or employees of the City while engaged in the work of placing, maintaining, relocating, replacing, renewing or removing the System or any appurtenant equipment, unless the damage or injury is caused by the negligence or willful act of MFS, its agents, contractors, affiliates or employees. In no event shall the City be liable to MFS for any consequential, incidental or special damages or lost profits incurred or alleged to have been incurred by anyone.

16. In addition to the above indemnifications, the City through its greater Mobil Oil shall provide MFS the following environmental indemnification:

(a) Definition. For purposes of this Agreement, the term "Hazardous Substance" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49

U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Sections 13000 et seq., all as amended, (the above-cited California statutes are here collectively referred to as "the State Toxic Substances Laws") or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory, including but not limited to, negligence, trespass, intentional tort, nuisance, waste or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

(b) Environmental Indemnity. MFS has reviewed that indemnification

agreement provided by Mobil Oil Corporation to the City and has determined that the indemnification and assurances by Mobil are sufficient to protect MFS and City from environmental liabilities. The City agrees to provide all available indemnification available through that agreement from Mobil to MFS that is available to City audits users and lessees.

17. (a) MFS shall obtain and maintain during the life of this Agreement the following insurance coverage:

(1) Comprehensive General Liability, including coverage for premises-operations, products/completed operations hazard, blanket contractual, broad form property damage, and independent contractors. In addition, MFS shall obtain and maintain during the life of this Agreement each of the following insurance coverages which are not stricken out by CITY ATTORNEY: Explosion and collapse hazard, underground hazard, personal injury, and automobile liability, including owned, hired and non-owned vehicles. All insurance owned, hired and non-owned vehicles. All insurance coverages shall have limits of not less than \$1,000,000.00 combined single limit, per occurrence and aggregate.

(2) Endorsements to the policies providing the above insurance shall be obtained by MFS, adding the following three provisions.

(i) Additional Insureds:

"The CITY OF CULVER CITY" and its elected and appointed boards, officers, agents, and employees are additional insureds with respect to the subject project and agreement."

(ii) Notice:

"Said policy shall not terminate, nor shall it be cancelled nor the coverage reduced, until thirty (30) days after written notice is given to CITY."

(iii) Other Insurance:

"Any other insurance maintained by the CITY OF CULVER CITY shall be excess and not contributing with the insurance provided by this policy."

(b) Prior to award of the contract by the City Council of CITY, MFS shall furnish CITY, through City Attorney, proof of compliance with the above insurance requirements in a form satisfactory to the City Attorney.

18. This Agreement and the rights and obligations of the parties hereunder shall for all purposes be governed by, and shall be construed in accordance with, the laws of the State of California, without regard to principles of conflicts of law.

19. All notices, requests or other communications (other than those normally required during the construction process) under this Agreement or required by law shall be in writing and shall be hand-delivered, sent by overnight delivery service, mailed by first-class, registered or certified mail, postage prepaid and return receipt requested, or transmitted by telegram or facsimile, addressed as follows:

If to MFS: MFS Telecom, Inc.
One Tower Lane, Suite #1600
Oakbrook Terrace, IL 60181

Attn: General Counsel

All invoices should be sent to "Accounts Payable" at the above address.

If to the City: City Attorney
City of Culver City
4095 Overland Avenue
Culver City, CA 90232

Attn: Norman Y. Herring

20. This Agreement constitutes the entire agreement between the parties with

respect to the subject matter hereof and it supersedes all prior oral or written agreements, commitments or understandings with respect to the subject matter hereof.

21. The parties agree to execute such documents as shall be reasonably required to perform the responsibilities, terms and conditions of this Agreement.

22. If any section, subsection, sentence, clause, phrase or other portion of this Agreement or its application to any person is, for any reason, declared in whole or in part by any court, agency, commission, legislative body or other authority of competent jurisdiction, said decision shall not affect this validity of the remaining portions thereof.

23. Neither this Agreement nor any terms or provision hereof may be amended, waived, modified, supplemented, discharged or terminated, except by instrument in writing executed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto set their hand and seal.

**METROPOLITAN FIBER SYSTEMS OF
CALIFORNIA d/b/a METROPOLITAN
FIBER SYSTEMS OF LOS ANGELES,
INC.**

By: 

Title: Senior Vice President, MFSCC

CITY OF CULVER CITY

By: 

Title: Mrs. Jody Hall Esser
Chief Administrative Officer

APPROVED AS TO FORM

By: 

Title: Norman Y. Herring, City Attorney

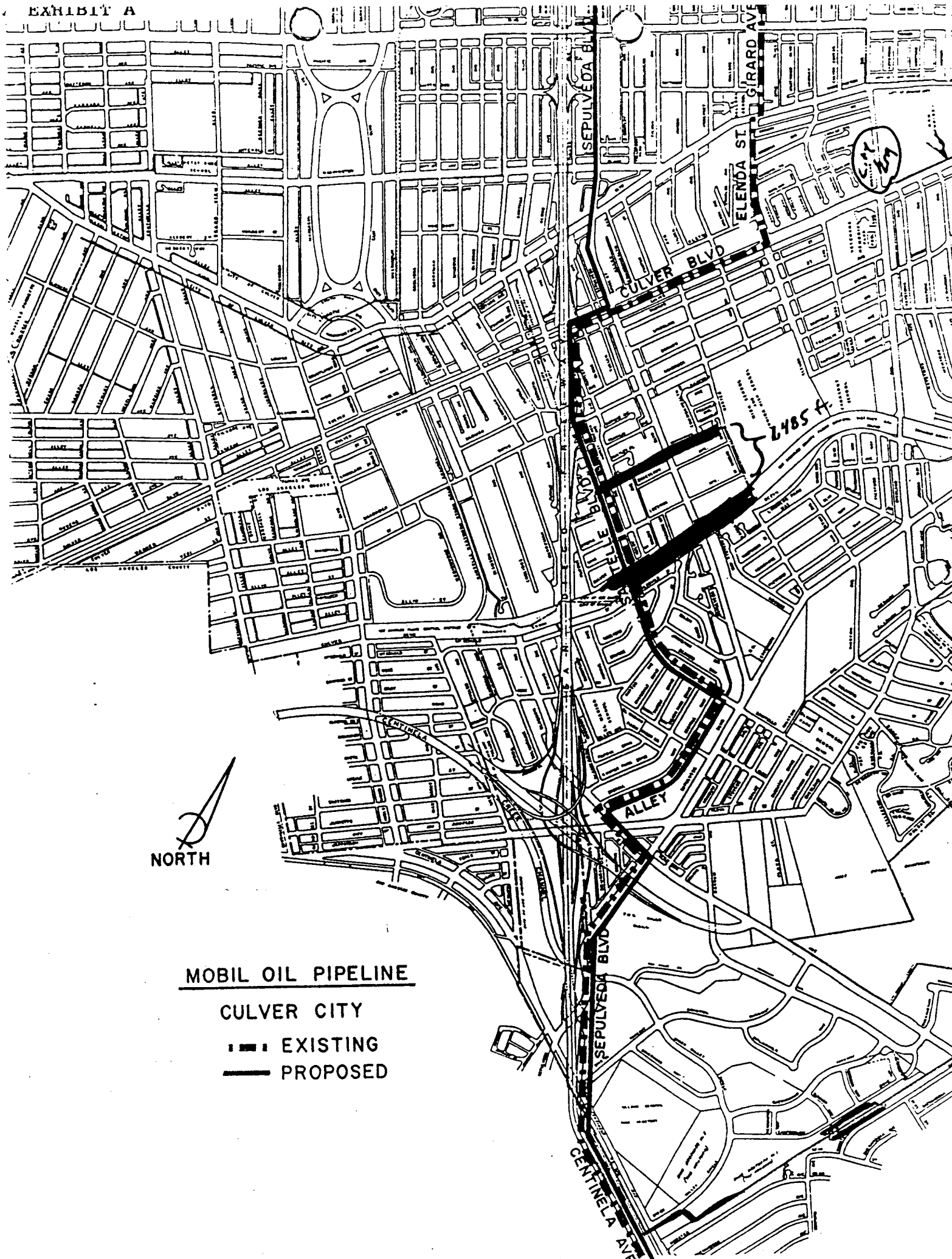


EXHIBIT B

SCOPE OF WORK

DESCRIPTION OF RIGHTS-OF-WAY

CULVER CITY

PIPELINE CONSTRUCTION

The pipeline routing for this segment begins at the Culver City/Los Angeles boundaries at Girard Ave. and Venice Blvd. It then proceeds south along Elenda St. to Culver Blvd. where it heads west to Sawtelle Blvd. The pipeline continues south along Sawtelle to Sepulveda Blvd. MFS will exit the pipeline at Sepulveda Blvd. and Centinela Ave., approximately 3 miles of construction within the Culver City boundaries.

The design and installation of the fiber optic carrying structure in this 15,840 lineal feet segment involves refurbishing an abandoned oil pipeline for use as a conduit. Access to this structure for pulling the fiber optic cable will be accommodated by removing short sections of pipe, at approximately 2,000 foot intervals, and replacing the voided areas with manholes. After the manholes are set in place, four one-inch innerducts will be installed spanning the entire length of the segment. A single cable, containing at least 36 fibers, will be installed in one of the innerducts.

EXHIBIT C

MOBIL OIL LINE RECOVERY PROCEDURE

There are five basic steps involved with the recovery of the oil pipe. These are:

- Valve Removal
- Manhole Installation
- Rodding and Roping
- Innerduct Installation
- Cable Placement

Valve Removal

At each valve location, the contractor will excavate around and remove the existing valve. The pipe will then be cut back to accommodate the installation of a 4'x4'x6' precast concrete manhole.

Manhole Installation

Manholes are placed to maintain access to the fiber optic cable and to assist in its installation. The manholes are located in such a way so that the minimum bending radius and maximum pulling tension specifications for the cable are not exceeded.

The cable should not be pulled through more than 270° of bends without assistance. Likewise, the cable should not be pulled around sharp 90° bends. Manholes are installed to eliminate both situations.

When the cable is pulled over a long distance, even when the pipe is relatively straight, friction builds up on the cable and will damage the fiber if the pulling tension exceeds 600 lb. To eliminate this problem, manholes are installed every 1000-1500 LF.

The procedure for placing manholes is similar to the valve replacement procedure. After the manhole location is chosen, the contractor excavates a 59"x59"x84" pit and pours approximately 6" of sand in the bottom to provide even pressure distribution for the weight of the precast concrete manhole.

The manhole is then set so that the lid will be flush with the existing road surface. The trench is then backfilled with one sack slurry to within 8" of the road surface. The slurry provides 100% compaction for the trench. 6" of base asphalt is placed over the slurry and compacted with a tamper. The final 2" of asphalt or "Final Cap" is placed and compacted with a 5 ton roller.

Rod & Rope Procedure

From manhole to manhole the contractor will rod the pipe to ensure continuity and then pull back a rope to use in placing the innerduct.

Innerduct Installation

The contractor uses the rope which is left from the rod and rope procedure to pull 4 - 1" PVC innerducts. The innerduct subdivides the pipe into 1" chambers and acts as protection for the fiber cable. After the innerduct is installed, the contractor will use the small rope which is in one of the innerducts to pull a larger rope through. This new rope will be used to pull the fiber cable.

Fiber Cable Installation

The contractor first prepares the manholes by setting up assist wheels and pulleys which ensure that the minimum bending radius is maintained when the cable passes through the manholes or is handled. The cable is pulled using a winch with a tensionometer and secured to the rope with a break-away swivel. Both of these devices are designed to prevent the cable from being pulled above the recommended pulling tension. After the cable installation is complete, the 15,000 LF sections are spliced together using a fusion splicer and tested with an OTDR.