

November 3, 2020

City of Culver City
9770 Culver Blvd
Culver City, CA 90232
Attn: John M. Nachbar, City Manager

Re: ***Binding Term Sheet between Ting Fiber Inc. ("Ting") and City of Culver City, California ("City")***

Dear John:

Ting and City are entering into this Binding Term Sheet (the "Term Sheet") setting forth the terms under which Ting will construct a fiber-optic network within the geographic limits of Culver City.

Ting's Responsibilities

- 1. Ting Investment:** Ting will procure, build, own, and maintain a fiber-optic network serving end users within the geographic limits of Culver City (the "Service Area"), using its own capital and resources ("Ting Network").
- 2. Gigabit Services:** Ting will use the Ting Network to offer gigabit Internet access services, as well as other services of Ting's choosing, to residential and other end users within the Service Area. Ting will offer, at a minimum, a speed tier of up to 1 (one) symmetrical gigabit per second (Gbps) to residents, backed by technical support provided 24/7.
- 3. Use of Culver Connect Assets:** Subject to successful negotiation (negotiation to be done using good faith efforts by Ting) of mutually agreeable rates and written agreements including a Dark Fiber Indefeasible Right of Use (IRU) Agreement or General Terms and Conditions (GTCs) and a Dark Fiber Facility Addendum (DFFA) for use of dark fiber, a GTCs and Transport Service Addendum for transport service, and a GTCs and Colocation Facility Addendum for rack space, and necessary related documentation, Ting will IRU or license a portion of available dark fiber, license rack space, and use transport service from Culver Connect Network for incorporation into the Ting Network. Sublicensing of Culver Connect Network dark fiber strands and other Culver Connect Network assets will be prohibited.

- 4. Commitment to Local Presence:** Ting will invest in hiring, advertising and where feasible, procurement of products and services from individuals and businesses located in Culver City.
- 5. Commitment to Fiber-to-the-Home:**
 - a. Ting will build the Ting Network past all homes, institutions and businesses within the Service Area, subject to mutually agreed reasonable exclusions, including existing availability of fiber-to-the premises service.
 - b. Ting will begin the Ting Network build by May 1, 2021 (approximately 6 months) and complete the Ting Network build by May 1, 2022 (approximately 12 months) (the "Construction Period").
 - c. Ting will designate a public relations contact, and provide a phone number and email for that contact. The contact will be responsible for responding to any and all questions, complaints and concerns from the general public during the Construction Period.
 - d. Ting will notify residents and businesses of upcoming construction by Ting on their streets or blocks via a letter sent to all impacted addresses no less than three weeks prior to commencement of planned construction on their street or block, and via a door-hanger the week before planned construction begins. The letter and door hanger shall include the contact information for Ting's designated public relations contact.
- 6. Warranty and Maintenance:** Ting will maintain and repair all network elements built or installed by Ting as part of this project, including the microtrenched areas of the public right-of-way, for as long as the Ting Network remains in the public right-of-way. Warranty and maintenance requirements will be further detailed in the long form agreement and/or City permits.
- 7. State and Federal Authorizations:** Ting will obtain and maintain all state and federal authorizations necessary to do business in the State of California, to build and operate the Ting Network, to deliver the services and to fulfill the other commitments discussed herein.
- 8. City Permits:** Ting will apply for and obtain all required permits and pay all City permit fees.
- 9. Community Initiatives:**
 - a. At the City's option, Ting and the City of Culver will work together to fund the installation of gigabit fiber to residents of affordable housing.
 - b. If the City chooses to implement the option in 9a, Ting will build the network and provide gigabit service to residents of affordable housing at a reduced monthly cost (compared to Ting's standard rates for comparable services) to be mutually agreed between the City and Ting.

- c. Ting will work with the City to identify and apply for any grant funding that would enable free monthly service for all affordable housing residents.
- d. Ting will work with the City to find an appropriate location to offer free, state-of-the-art, fiber-fed WiFi that is accessible to residents and visitors outdoors.
- e. Ting will develop a program to provide free Internet service to non-profit organizations serving the Culver community.
- f. Once Ting has the necessary certifications and approvals, Ting will offer Lifeline Broadband service to eligible households in the Service Area.

10. Compliance With Laws; Taxes; Prevailing Wages:

- a. Ting's performance under this Binding Term Sheet shall be in compliance with all applicable federal, state and local laws and government rules and regulations.
- b. Ting shall be responsible for payment of all fees, taxes and assessments charged in connection with the right, title, and interest in and construction, maintenance and operation of the Ting Network. City hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Ting acknowledges, that this Binding Term Sheet may create a possessory interest and Ting may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107.6.
- c. Ting is aware of the requirements of California Labor Code sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq. (the "Prevailing Wage Laws"). Ting shall comply with such Prevailing Wage Laws with respect to any work under this Binding Term Sheet which constitutes, or is determined by the Department of Industrial Relations or by a court to be, a "public works" project under California law. Ting shall also defend, indemnify and hold harmless City, its elected officials, officers, employees and agents from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws in connection with this Binding Term Sheet.

Culver City Responsibilities

- 1. City Cooperation:** To facilitate Ting's city-wide buildout in the Service Area with minimal disruption to the general public from Ting's activities, the City agrees, to the best of its ability during the Construction Period, to do the following:
 - a. Provide streamlined processes and expedited response times for permits during the Construction Period;

- b. Cooperate with Ting to educate residents and businesses on potential disruptions from construction, and public right-of-way access.

2. Permitting Requirements: City will establish general terms and conditions for the permanent installation, including microtrenching requirements, quality standards, warranty and repair requirements, and relocation requirements.

Mutual Responsibilities:

1. Long Form Agreement(s): Both Parties will work together in good faith to negotiate and execute one or more binding and definitive long form agreements promptly following the date of this Binding Term Sheet. Such long form agreement(s) may include:

- a. **IRU For Culver Connect Fiber**
- b. **Operations & Maintenance Agreement for Culver Connect Fiber**
- c. **Colocation Agreement for Ting Electronics**
- d. **Affordable Housing Internet Service Contract**
- e. **Agreement regarding warranties and indemnities**
- f. **Other agreements as needed**

Any further negotiated agreements should be consistent with the terms of this Binding Term Sheet, the agreements above, and Ting's California DIVCA or CPCN licenses. Until such time as this Binding Term Sheet is replaced by any such further documentation, this Binding Term Sheet remains binding on, and memorializes the legal and enforceable rights and obligations of, the Parties. If the Parties have not executed long form agreement(s) within 90 days of full execution of this Binding Term Sheet, except for the agreements listed in 1(d) and 1(f), above, either Party may terminate this Binding Term Sheet upon 5 days' written notice without any liability whatsoever other than responsibility for its own costs.

2. Public Announcements: Except for presentation at an open session of City Council for consideration of approval, as described below, and related public noticing of the City Council item, neither Party may make any public announcement of this Binding Term Sheet or its terms until both Parties agree upon time, content, and manner for a formal announcement.

Other Terms:

1. Responsibility for Costs. Except as specified otherwise herein, each Party will be responsible for and bear all of its own costs and expenses incurred at any time in

connection with the performance of its responsibilities under this Binding Term Sheet and the negotiation and execution of long form agreement(s).

- 2. Applicable Law and Venue:** This Binding Term Sheet shall be governed by the laws of the State of California. Any dispute or controversy arising under or related in any way to this Binding Term Sheet shall be adjudicated by a state court of competent jurisdiction located in Los Angeles County, California.
- 3. Counterparts:** This Binding Term Sheet may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.
- 4. City Council Approval:** This Binding Term Sheet must be approved by the City Council on or before November 16, 2020, or it shall be null and void.

Please sign as indicated below to signify City's concurrence with the terms proposed herein.

Sincerely,

Agreed and accepted this ____ day of _____, 2020

City of Culver City

By: _____

Name: John M. Nachbar

Title: City Manager