AGREEMENT FOR THE POSITIVE LOCATION OF UNDERGROUND UTILITIES

Date: June 7, 2002

PARTIES:

1. State of California, acting by and through the Department of Transportation ("Department"). "Department" includes the Department, its officers, agents, employees and contractors.

2. 360networks inc. ("Owner"). "Owner" includes the Owner, its officers, agents, employees and contractors.

RECITALS:

A. Owner owns, operates or maintains underground utility facilities in the State of California.

B. In order to facilitate the planning, design and construction of Department's projects and to ensure the safety of the traveling public, the horizontal and vertical location and/or apparent visual condition of underground utilities must periodically be confirmed. These activities and their results are known as "positive location", and are more commonly referred to as "potholes". Where referred to in this agreement, such positive location operations include but are not limited to: vacuum extraction excavation, electronic detection, probing, external and internal video inspection.

C. In general, utility owners have been responsible for performing such positive location activities, with the cost of such activities apportioned as provided by California law, Master Contracts or Department's policies.

D. Department's needs frequently require the positive location of underground utilities more expeditiously than Owner can readily or economically provide.

E. Department is willing to assume control of the operation and cost of such positive location of underground utilities on a test basis to facilitate Department's needs from time to time as provided herein; and to determine if assuming the cost and operation of this work creates sufficient benefit to the Department to justify continuing the practice.

THEREFORE:

1. This agreement is made and executed by the parties hereto pursuant and subject to the provisions of Sections 680.5 and 707.5 of the Streets and Highways Code. It shall govern exclusively the determination of the obligations and costs to be borne by each party hereto in regard to work described herein in lieu of determination under the provisions of Sections 673, 680 and 700 to 707, inclusive, of said Streets and Highways Code, as now or hereafter existing, or under any other laws applicable to said subject matter. This agreement shall apply throughout the State of California to all of the Department's projects and related activities. It is not intended to, and shall not, establish any precedent, principle, rule or guide to interpretation, as between the parties hereto after its termination or as between either of the parties hereto and any third party at any time, and may be terminated at any time as provided herein.

2. The work to be performed under this agreement is limited to the work necessary to positively determine the horizontal and vertical location and/or apparent visual condition of the Owner's utility facilities with the degree of accuracy necessary to meet the Department's requirements. All work under this agreement shall be preceded by the delivery of a written notification to Owner by Department.

3. This agreement does not apply to the relocation, rearrangement, removal or protection of utility facilities.

4. When the work described in this agreement is performed by the Department, the cost of the work shall be borne by the Department. The Owner shall provide confirmation in the field of the identity and typical characteristics (including size, material, contents, pressure or capacity) of Owner's exposed utility facility and related activities, including but not limited to, inspection services at no expense to the Department, in accordance with the Department's time schedule.

5. It is anticipated that the work described in this agreement will be performed by the Department through the services of a contractor. In those instances when the Department chooses not to perform the work, the Department will issue a "Notice To Owner" ordering the Owner to diligently perform the work in accordance with Department's reasonable time schedule included in the Notice To Owner, and the Department will bear the cost of the work per separate agreement if the work is completed within the Department's time schedule. The Owner shall allocate sufficient staff and resources to meet all schedules established for the project design and construction work. Should the Owner not meet Department's schedule, Department shall have the right and option to perform such work to maintain Department's schedule.

6. The Owner may choose to perform certain positive location work itself, pursuant to prompt notification to Department of Owner's intention. When the Owner so elects to perform such work the cost of the work shall be borne by the Department in the same amount as the unit cost for such work by the Department's contractor for the District area. If no such contract exists at the time, cost shall be the most recent such contract cost for the District area. Department will issue a Notice to Owner ordering the Owner to diligently perform the work in accordance with Department's reasonable schedule included in the Notice to Owner. The Owner shall allocate sufficient staff and resources to meet all schedules established for the project design and construction work. Should the Owner not meet Department's schedule, Department shall have the right and option to perform such work to maintain Department's schedule.

7 It is intended that all work under this agreement performed by the Department shall be performed using the vacuum extraction method, hand excavation or comparable methods acceptable to the Owner and the Department. Electronic detection may also be used in conjunction with, and when confirmed by, vacuum extraction at the Department's option. Other machine methods may only be used to remove paving materials. Machine methods used by Department for any other purpose will require the concurrence and on-site observation of Owner.

8. Owner grants to Department, immediately upon receipt of notification, in accordance with the Department's time schedule, permission to perform positive location of Owner's facilities within Owner's private rights of way, wherever located. Owner retains the right to require reasonable controls and restrictions. Such controls and restrictions shall be promptly provided to the Department in writing.

9. Upon the completion of the work performed under this agreement, Department shall restore the work site to as good a condition as that found when the work commenced.

10. Department shall defend, indemnify and hold Owner harmless from any death, injury, or property claims made by any person which materially arise from work performed by the Department, its employees, agents and contractors pursuant to this agreement. Owner shall defend, indemnify and hold Department harmless from any death, injury, or property claims made by any person which materially arise from work performed by the Owner, its employees, agents and contractors pursuant to this agreement.

11. This agreement eliminates and replaces any previous agreement between the parties, or portions thereof, regarding positive location activities ("potholing").

12. This agreement may be amended, changed or altered by mutual consent of the parties hereto in writing.

13. This agreement may be terminated by either party upon ninety (90) days written notice.

14. Time shall be of the essence of this agreement.

Owner -
Title - OSP Engineer 360 Networks

Date May 28, 2002

Lorrie Wilson, Chief
Utility Relocation Branch
Right of Way
Department of Transportation

Date June 7, 2002

DISTRIBUTION:
Two Original Counterparts: One Counterpart to Department – Right of Way H.Q.
One Counterpart to Owner