

CONSULTANT AGREEMENT FOR SERVICES
RELATING TO
THE CITY OF CULVER CITY'S MUNICIPAL FIBER NETWORK
by and between
CITY OF CULVER CITY
and
MOX NETWORKS, LLC

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ATTACHMENTS

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CONSULTANT AGREEMENT FOR SERVICES RELATING TO

THE CITY OF CULVER CITY'S

MUNICIPAL FIBER NETWORK

(City Contract No. _____)

THIS CONSULTANT AGREEMENT FOR SERVICES RELATING TO THE CITY OF CULVER CITY'S MUNICIPAL FIBER NETWORK ("Agreement") is made and entered into this ___ day of _____, _____, by and between the CITY OF CULVER CITY, a charter city of the State of California ("City"), and MOX NETWORKS, LLC, a Delaware limited liability company ("MOX" or "Consultant"). City and MOX are also referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The City desires to build and expand on an existing fiber network of the City by installing fiber broadband network infrastructure in specified areas of Culver City in order, among other purposes, to facilitate the delivery of high speed internet access to the City for municipal purposes, to the Culver City Unified School District, and to businesses within specified areas of Culver City, and also to stimulate economic development; and

B. In furtherance of the City's desires, the City retained CTC Technology & Energy (CTC) and MOX to analyze the City's existing fiber network infrastructure of conduit and fiber optic cables, the internet needs within the City and the emerging industry trends as they relate to developing a fiber network design and business plan for the City; and

C. The analyses of CTC and MOX have collectively resulted in a proposed fiber broadband network that will provide approximately 288 strands of fiber and include the following four (4) essential components: (i) a redundant fiber backbone of approximately 20.7 miles that includes three (3) geographical network rings that are all interconnected by "Ring Ties" of approximately 3.1 route miles of fiber, (ii) fiber laterals to user locations, (iii) local interconnection host sites located within the City (i.e. network nodes), and (iv) fiber connection to data carrier hotels/communication hubs located outside the City (collectively, the "Network"); and

D. To facilitate the desires of the City and the development of the proposed Network, MOX expressed interest in working with the City to assist with the Network design, construction management, implementation, planning, marketing, business development, operation, and ongoing maintenance. MOX has represented to the City that it has extensive experience in building and developing custom fiber networks and

industry specific experience in telecommunications, global fiber network architecture and design, global data center strategies, and network deployment; and

E. Based on MOX's extensive experience with developing fiber broadband networks and to facilitate the development of the proposed Network, the City desires to retain MOX and MOX desires to be retained to provide in accordance with this Agreement all of the following generally described services to assist the City with design and development of the proposed Network: (i) project management, design and engineering of the Network; (ii) development of bid and construction documents for the Network, construction management for the bid process and the build-out of the Network in accordance with approved plans, and conducting testing for Network system acceptance; and (iii) pre-operations planning, marketing and business development of the Network including, without limitation, contacting, communicating, and negotiating contracts with service providers and other users of the Network in accordance with and subject to City approval of the terms and conditions thereof; and

F. Upon completion of construction of the Network, and as detailed in a separate agreement to be mutually negotiated in good faith by the Parties, the City will retain MOX, and MOX will provide all necessary and required ongoing services to sufficiently operate and maintain the Network and to perform ongoing marketing and business development of the Network including, without limitation, contacting, communicating, and negotiating contracts with service providers and other users of the Network.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the City and Consultant hereby agree as follows:

Section 1. Purpose of Agreement and Intent of Parties.

A. This Agreement outlines the duties, obligations, responsibilities, and rights of the City and Consultant relating to Consultant's services to the City, strictly as an independent contracting party and not in the capacity of an agent or employee of the City as more fully discussed below in this Agreement, with (i) the design, and construction of the Network in accordance with the terms and conditions of this Agreement and in compliance with the terms, conditions and requirements of the "Scope of Work No. 1" attached hereto, labeled "Attachment No. 1" and incorporated herein by this reference, including, without limitation, Consultant's preparation of the design and construction plans, drawings, criteria and specifications of the Network, (ii) Consultant's preparation of the prequalification and bid documents for construction of the Network, Consultant's review of proposals and assistance with the City's selection of the contractor(s), and Consultant's assistance as the construction manager for construction of the Network, in compliance with the terms, conditions and requirements of the "Scope of Work No. 2" attached hereto, labeled "Attachment No. 2" and incorporated herein by this reference and (iii) pre-operations planning, marketing and business development services, and necessary use agreements for the operations of the Network and for third party licenses of the Network in compliance with the terms,

conditions and requirements of the "Scope of Work No. 3" attached hereto, labeled "Attachment No. 3" and incorporated herein by this reference.

B. Upon the completion of construction and development of the Network, as determined by the City in its sole discretion, or at such earlier time as determined by the City in its sole discretion, the Parties intend that Consultant will provide ongoing operations and maintenance of the Network, ongoing marketing and business development services relating to use and operations of the Network, and an ongoing license to the City of certain fibers located outside of the City jurisdiction to connect the Network to One Wilshire and Equinix at El Segundo, as further described in Section 10 below, all pursuant to a proposed Operations, Maintenance and Business Development Agreement to be mutually negotiated by the Parties, to the satisfaction of the City Attorney in her sole discretion, and subject to the approval of the City Manager in his sole discretion. The Parties agree to diligently and in good faith negotiate the terms and conditions of the Operations, Maintenance and Business Development Agreement on a schedule consistent with the construction and development of the Network. The negotiation and approval by the Parties of the Operations, Maintenance and Business Development Agreement shall be a condition precedent to the award by the City of a construction contract for the Network.

Section 2. Consultant Services.

A. In reliance on Consultant's knowledge, experience and expertise in designing and developing custom fiber optic communications networks, the City hereby retains Consultant, and Consultant hereby agrees to be retained, to provide services to the City for the design, construction, planning, marketing, and business development of the Network to be located in the area generally depicted on the "Site Plan" attached hereto as "Attachment No. 4" and incorporated herein by this reference, pursuant to the terms and conditions of this Agreement as more fully set forth herein and as described in the Scope of Work No.1 (Project Management of Network Design and Engineering) attached hereto as Attachment No. 1, Scope of Work No. 2 (Construction Phase Support) attached hereto as Attachment No. 2, and Scope of Work No. 3 (Pre-Operations Planning and Business Development Consulting) attached hereto as Attachment No. 3.

B. Consultant agrees to fully perform (or in the case of sub-consultants first approved in writing at the sole discretion of the City, cause the performance of) the tasks, obligations and services set forth in the scope of work for each aspect of the Network, in particular, for the design, construction, planning, marketing, and business development of the Network, as described in the Scope of Work No. 1 (Project Management of Network Design and Engineering), Attachment No. 1; Scope of Work No. 2 (Construction Phase Support), Attachment No. 2; and Scope of Work No. 3 (Pre-Operations Planning and Business Development Consulting), Attachment No. 3.

C. With respect to construction management services to be provided under Scope of Work No. 2:

(1) It is the intention of the Parties that Consultant provide pursuant to this Agreement specific construction management services that will assist the City in ensuring the Network is completed as designed and as constructed by others and provides a state of the art Network as approved by the City Council;

(2) Consultant understands and accepts that, within the scope of the construction management services to be provided by Consultant under this Agreement, the City is relying on the Consultant to demonstrate and practice, at all times and without relying upon the initiative of others, leadership in facilitating the prompt, efficient and economical planning, design and construction of the Network, including, without limitation: (1) addressing the identified needs of the City relating to the work to be performed under this Agreement; (2) proactively identifying and expediting resolution of matters in question among project team members; (3) keeping all project team members reasonably informed, to the extent appropriate to their roles and responsibilities, of current information, recent developments and upcoming deadlines and milestones; (4) working to create and build a team approach that reflects an optimum degree of consensus among the project team members; and (5) being fully responsive to the expressed objectives of the City; and

(3) Consultant's authority to act on behalf of the City is limited to its scope of authority set forth in this Agreement and its attachments. Notwithstanding anything else stated in this Agreement or its attachments, Consultant shall not have the express or implied authority to obligate the City to any expenditure of money or extension of contractual time periods, including, without limitation, any adjustment to the price or time of performance of any contract between the City and any architect, the contractor or any specialty consultants.

D. Consultant hereby represents and warrants that Consultant possesses, or will retain qualified approved subcontractors meeting the requirements of this Agreement who possess, all of the permits, licenses and/or other qualifications required by applicable law for the performance of all such services.

E. In connection with performance and implementation of this Agreement, Consultant agrees to reasonably coordinate its performance of the services as necessary with other civil engineering and structural engineering consultants and contractors retained or contracted with by Consultant or the City for the development of the Network. Any requirements applicable to Consultant under this Agreement for the performance of any services shall also be applicable to any services to be performed for this Agreement by any sub-consultant or subcontractor contracting with Consultant, and all such sub-consultant or subcontractor agreements shall be subject to the prior written approval of the City.

Section 3. Post-Completion Maintenance and Operation.

A. After construction of the Network has been completed, Consultant shall perform all maintenance and operation services for the City and the City shall retain

Consultant to perform such maintenance and operation services for the Network in accordance with the terms and conditions of the proposed Operations, Maintenance and Business Development Agreement referred to in Section 1.B, which shall be mutually negotiated diligently and in good faith by Consultant and City. The City Manager shall be authorized to execute such an agreement on behalf of the City upon review and approval of any such agreement by the City Attorney.

B. In exchange for the services provided to City from Consultant under such proposed Operations, Maintenance and Business Development Agreement, when, and only when, the Network is constructed and fully operational, such agreement shall provide for Consultant to be paid the actual and reasonable cost of required services and materials in accordance with an agreed upon schedule, which shall be paid by the City in the first year of operation and from Network net revenues after the first year.

C. Such proposed Operations, Maintenance and Business Development Agreement shall include provisions for net rental and license fees and other Network revenue to be paid to the City for the use and operation of the Network consistent with license agreements between the City and licensees of the Network, and shall be otherwise consistent with the (a) City's ownership and control of the Network, including without limitation licenses required for Network interconnection outside of the boundaries of the City, and (b) the requirement that the City's prior written approval in the sole discretion of the City, as well as appropriate written consents from the private property owner(s) involved, must be obtained for the installation of any equipment and/or construction of any improvements in any public right of way or in any private property as a part of or in connection with the use of the Network.

D. Such proposed Operations, Maintenance and Business Development Agreement shall also include provisions providing the City with the right in its sole discretion to terminate the agreement, subject to agreed-upon notice and related provisions, after the first year of operation of the Network.

Section 4. Consultant Compensation for Scopes of Work Nos. 1, 2 and 3.

A. City shall pay for the services performed by Consultant pursuant to the terms of this Agreement, the following compensation:

For performing and completing all work and services described in one or more Notice(s) to Proceed issued by City under this Agreement and described in each of the attached Scopes of Work No. 1, No. 2 and No. 3 and for providing all materials required thereof, City shall pay Consultant the total amounts set forth in the Schedule of Compensation attached hereto, labeled Attachment No. 8 and incorporated herein by this reference.

B. Subject to the specific provisions of the Schedule of Compensation (Attachment No. 8) compensation paid to Consultant under this Agreement shall be paid at the following times and in the following manner:

- (1) The above amounts shall include all out-of-pocket expenses incurred by Consultant in the performance of such services.
- (2) Payments for services shall be pursuant to monthly invoices first approved by the City, detailing the services performed; such payment to be made if due under the terms and conditions of this Agreement within forty-five (45) calendar days of the City's receipt of invoice.
- (3) Consultant shall not perform any services under this Agreement except as described in a Notice to Proceed issued by the City.
- (4) Consultant shall not perform any services under this Agreement until Consultant furnishes proof of insurance as required under this Agreement.
- (5) Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9, as issued by the Internal Revenue Service.
- (6) The City Manager is authorized in his sole discretion to approve in writing payments which vary from budgeted line amounts by no more than ten (10) percent, in accordance with applicable City Public Works procedures.

Section 5. Enterprise Fund/Special Limited Obligations of City. The City has established a special fund of the City to function as an enterprise fund for all expenditures of the City related to the Network. During the term of this Agreement, all net project revenues and the proceeds of loans, if any, to be made by the City to the enterprise fund shall be deposited in the enterprise fund. The obligations of the City under this Agreement and the agreements referred to in Section 10 are payable as a special and limited obligation of the City from said Network enterprise fund and are not a debt of the City nor a legal or equitable pledge, charge, lien, or encumbrance, upon any of the property of the City, or upon any of the income, receipts, or revenues of the City except the funds contained in the said Network enterprise fund. Without limiting the foregoing, in the event the City has not appropriated sufficient funds for payment of Consultant services beyond each current fiscal year occurring during the term of this Agreement, this Agreement shall, as to each such fiscal year, only cover those costs incurred up to the conclusion of each current fiscal year. The requirements of the immediately preceding sentence shall also be applicable to the agreements referred to in Section 10 below.

Section 6. Designated Representatives.

A. Tanya Hamerler, Vice President of Operations for Consultant, shall be the designated Consultant Representative and shall be responsible for job performance, negotiations, contractual matters, and coordination with the City. Consultant Representative shall actually perform, or provide immediate supervision of Consultant's performance of the Scopes of Work and the performance of subcontractors or subconsultants. The City shall have the right of prior written approval of any successor

designee in the sole discretion of the City. Without limiting the foregoing, no later than thirty (30) calendar days from the effective date of this Agreement, Consultant shall prepare for the City's review and written approval a Communications Plan specifying the name and contact information for persons of contact of Consultant who will assist with implementing and overseeing different areas of work set forth in the Scopes of Work.

B. John M. Nachbar or designee shall be the designated City Representative and shall be responsible for negotiations, contractual matters, and coordination with Consultant.

Section 7. Schedule of Performance. This Agreement shall commence upon the effective date of this Agreement. The timeline of the development of the Network and various milestones for the development of the Network shall commence upon issuance by the City of one or more Notices to Proceed and shall be completed in accordance with the times specified in the Schedule of Performance, attached hereto as "Attachment No. 5" and incorporated herein by this reference. The Schedule of Performance is subject to revision from time to time as mutually agreed upon in writing between City and Consultant. During the development of the Network, the Consultant shall submit to the City a written report of Consultant's progress with the development of the Network, when and as reasonably requested by the City.

Section 8. Termination.

A. City may terminate this Agreement at any time, with or without cause, in the sole discretion of the City, with thirty (30) calendar days written notice.

B. Upon termination without cause, City shall be liable to Consultant only for work performed by Consultant, and for costs incurred by Consultant in accordance with the Budget and Scopes of Work and as contemplated by this Agreement, up to and including the date of termination of this Agreement to the extent satisfactorily performed and documented by a close-out billing. Upon termination for cause, Consultant need be compensated only to the extent required by law. Any such termination for cause shall require written notice to Consultant providing reasonable detail of the alleged default and providing no less than thirty (30) calendar days for Consultant to cure such default, and only after Consultant has failed to timely effect such cure within such notice period may the City invoke termination for cause.

Section 9. Notice to Proceed. At various intervals of the development of the Network, in accordance with the Schedule of Performance, City will review the status and progress of the development of the Network. The City will determine, in its sole discretion, if the development of the Network is progressing in a timely and satisfactory fashion. At that time, the City may issue a Notice to Proceed. Upon Consultant's receipt of such a Notice, Consultant may proceed with the next portion of the Network.

Section 10. Other Required Agreements.

A. Prior to and as conditions precedent to the award of any construction contract for the Network by City, the following agreements are contemplated by the Parties:

(1) Operations, Maintenance and Business Development Agreement between Consultant and City (discussed above in Section 1.B). The City Manager shall be authorized to execute such agreement on behalf of the City upon review and approval of such agreement by the City Attorney; and

(2) License and Colocation Services Agreement between Consultant and City for the use of Consultant's facilities located in Culver City to interconnect the Network with such facilities and to allow the City's own use of such interconnection and the use of the physical infrastructure owned by NantWorks at its offices located at 9920 Jefferson Boulevard within Culver City for rack, space and power for operation of the Network and for placement of the City-owned equipment for the Network at NantWorks to include, without limitation, a Network node or hub, in exchange for the City licensing to Consultant twelve (12) strands of Network fibers for Consultant's use for 20 years; and to include provisions prohibiting any sublicensing or other agreement by either Party and any third party without the prior written approval of the other Party, subject to use by affiliates as agreed to by the Parties in the agreement. Such License and Colocation Services Agreement shall be mutually negotiated diligently and in good faith by Consultant and City. The City Manager shall be authorized to execute such agreement on behalf of the City upon review and approval of such agreement by the City Attorney. At the discretion of the City, the Parties shall negotiate to include provisions related to the City's need to terminate such License and Colocation Services Agreement after the first five (5) years of the Agreement under certain limited circumstances impacting the City's continued ability to operate the Network as constructed, such as the sale of the Network by the City, the closure of the Network by the City, the financial or fiscal infeasibility of the Network or some other event which makes it commercially unreasonable and detrimental to the best interest of the City to continue. Any such provisions shall guarantee to Consultant the right and the option to continue to license, access and operate, up to the twelve (12) strands of Network fibers referred to above for the balance of the 20 year period of the license remaining after any such permitted termination, upon payment to City, in cash or equivalent consideration deemed acceptable by the City in its sole discretion, of an amount determined on a pro rata basis based on the number of years of the license period remaining after the termination, the number and distance of fibers elected by Consultant, and a fair value amount to be agreed to by the Parties in the agreement.

B. In addition to such agreements referenced above in Section 10.A, the Parties contemplate that the following agreements will also be negotiated and entered into for the implementation of the development and operation of the Network, and the

City Manager shall be authorized to execute such agreements on behalf of the City upon review and approval of each such agreement by the City Attorney:

- (1) Operation of the Network shall require a Colocation Services Agreement and any required licenses to interconnect the Network with One Wilshire located in the City of Los Angeles and to allow the City's own use of such interconnection;
- (2) Operation of the Network shall require a Colocation Services Agreement and any required licenses to interconnect the Network with Equinix at El Segundo located in the City of El Segundo and to allow the City's own use of such interconnection;
- (3) Subject to the City's election, a Colocation Services Agreement between City and Culver Studios for the use of Culver Studios' facilities located in Culver City to interconnect the Network with such facilities and to allow the City's own use of such interconnection and the use of the physical infrastructure owned by Culver Studios at its offices located within Culver City for rack, space and power for operation of the Network and for placement of the City-owned equipment for the Network at Culver Studios to include, without limitation, a Network node or hub; and
- (4) Appropriate arrangements for the provision, financing, construction and operation of Network laterals, it being understood that any City obligation with respect to laterals shall be subject to obtaining necessary access and easement agreements. The City has indicated a willingness to consider funding a portion of the first phase lateral construction costs.

C. Consultant shall diligently and in good faith use its best efforts to take all necessary steps and sign all necessary documents for the Network in order to effectuate the negotiation, approval and execution of such other required agreements, as applicable, on a schedule consistent with the Schedule of Performance of this Agreement.

Section 11. Indemnification. As a material part of the consideration for this Agreement, and to the maximum extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless the City, members of the City Council, City's boards and commissions, officers, employees, agents, and representatives (the "Indemnitees"), with counsel reasonably acceptable to City, from and against any and all loss, liability, damage, claims, demands, suits, costs or expenses (including reasonable attorneys' fees, court and litigation costs and fees of expert witnesses) resulting or arising from the acts, errors or omission of Consultant in the performance of its obligations under this Agreement, except to the extent caused by the gross negligence or willful misconduct of the Indemnitees. Consultant agrees to be fully responsible to the Indemnitees, and defend, indemnify and hold harmless such parties for any and all losses and liabilities resulting from any acts of each and every contractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement.

City and Consultant shall promptly notify the other Party to this Agreement of the filing of any such claim or action and cooperate with the defense thereof. Consultant shall not settle or compromise the defense of such claim or action on behalf of the City, or permit a default judgment to be taken against the City, without the prior written approval of the City, which shall not unreasonably be withheld. Each Party shall use reasonable efforts to mitigate the damages for which the other Party may be responsible hereunder. These indemnification provisions shall survive the termination of this Agreement. Under this paragraph, Consultant shall mean Consultant, its employees and its agents.

Section 12. Relationship Between City and Consultant. The City and Consultant agree that Consultant, in the performance of this Agreement, shall act as and be an independent contractor and shall not act in the capacity of an agent, employee or partner of the City. It is hereby acknowledged that the relationship between the City and the Consultant is not that of a partnership or joint venture and that the City and the Consultant shall not be deemed or construed for any purpose to be the agent of the other. Consultant agrees to indemnify, hold harmless and defend the City from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and the Consultant with respect to the development, operation, maintenance or management of the Network by Consultant; provided, however, such indemnification, hold harmless and defend obligation of Consultant excludes any claim or portion of a claim arising solely from the City's failure to follow the City's own procurement procedures or regulations.

Section 13. Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the City, its successors and assigns, and the Consultant, its permitted successors and assigns, and no other person or persons shall have any right of action hereon or hereunder.

Section 14. Insurance. Without limiting its obligations under Section 11 above, the Consultant shall procure and maintain for the duration of this Agreement, insurance coverage as set forth in the Insurance Requirements described in "Attachment No. 6" to this Agreement, attached hereto and incorporated herein by this reference. In addition, any third party consultants retained by Consultant to design or provide additional assistance for the Network will be required to secure insurance as described in the Insurance Requirements in Attachment No. 6 hereto, naming the City, members of its City Council, its boards and commissions, officers, agents, representatives, and employees as additional insureds.

Section 15. Ownership of Consultant's Work Product. City shall be the sole owner of any and all computations, reports, plans, correspondence and/or other pertinent data, information, documents and computer media, including disks and other materials gathered or prepared by Consultant or caused to be gathered or prepared by Consultant in performance of this Agreement, and Consultant shall deliver such materials, including without limitation the originals thereof, to City within ten (10) calendar days after a written request is made by City (including copyright and intellectual property rights) without obligation to Consultant, whether the Network is implemented or not, and whether or not this Agreement is terminated for any

reason. City shall be the owner of all design or other work product produced by any third party consultant whose services are retained by Consultant for the Network, and Consultant shall deliver such materials to City within the time frame described in this section when City provides Consultant a written request for such materials. In addition to performing all services required hereunder, all written documents that are intended for public review shall be provided to City by Consultant in a format suitable for posting on the internet. Consultant shall be deemed to have irrevocably assigned to the City in perpetuity with no reserved or retained rights in any other persons or entities, all copyrights to such documents. The City hereby grants to the Consultant a license, revocable at will of the City, to use and copy such documents during the term of this Agreement for the sole purpose of performing the services required under this Agreement.

Section 16. Records and Inspections. Consultant shall maintain full and accurate records for all services and matters covered under this Agreement. City shall have free access at all reasonable times to such records, and the right to examine and audit same and make transcripts or copies therefrom, and to inspect all program data, documents, proceedings and activities. Consultant shall maintain an up-to-date list of key personnel and telephone numbers for emergency contact after normal business hours.

Section 17. City is Third Party Beneficiary to Outside Contracts. City shall be a third party beneficiary to any and all contracts entered into by Consultant with third parties in Consultant's exercise of its duties and obligations pursuant to this Agreement. A Rider to Contract shall be entered into and executed by Consultant and each and every third party consultant used for the Network in the form of the Rider attached hereto as "Attachment No. 7" and incorporated herein by this reference.

Section 18. Assignment. The qualifications and identity of Consultant is of particular concern to the City. It is because of those unique qualifications and identity that the City has entered into this Agreement with the Consultant. Any attempt by Consultant to assign the benefits or burdens of this Agreement without the prior written approval of the City shall be prohibited and void. No voluntary or involuntary successor in interest to Consultant shall acquire any rights to the Network or under this Agreement except as expressly set forth herein.

Section 19. Compliance with Applicable Laws. Consultant shall carry out its duties and obligations for the Network in conformity with all applicable state, federal and local laws, codes, regulations and requirements including without limitation, regulations set forth in the California Public Utilities Code, regulations issued by the Federal Communications Commission, labor laws, City zoning and development standards, building, plumbing, mechanical and electrical codes, provisions set forth in the Culver City Municipal Code, and disabled and handicapped access requirements (including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., California Government Code Section 4450, et seq., California Government Code Section 11135, et seq., and the Unruh Civil Rights Act, California Civil Code Section 51,

et seq.). Consultant further agrees to comply with the prevailing wage requirements as specified in California Labor Code Sections 1720, *et seq.*

Section 20. Permits and Licenses. Consultant, at its sole expense, shall obtain and maintain during Consultant's performance of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement, including, but not limited to, a Culver City business tax certificate.

Section 21. Right to Utilize Others. City reserves the right to utilize others to perform work similar to the services provided hereunder.

Section 22. Amendment or Modification of Agreement. This Agreement may not be amended or modified, nor may any of the terms, provisions or conditions be amended, modified or waived or otherwise affected, except by a written amendment signed by all Parties hereto.

Section 23. Waiver. If at any time one Party shall waive any term, provision or condition of this Agreement, either before or after any breach thereof, no Party shall thereafter be deemed to have consented to any future failure of full performance hereunder.

Section 24. Covenants and Conditions. Each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

Section 25. Notices and Communications Between the Parties.

A. Notice, request, demand or other communication shall be sufficient if the same is in writing and sent by, and all notices required to be given by mail will be given by, first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery. Unless a different address is given by any Party as provided in this section, all such communications will be addressed as follows:

To City: City of Culver City
Attn: Michele Williams, Chief Information Officer
9770 Culver Boulevard
Culver City, California 90232-0507

Copy to: City of Culver City
Attn: Carol Schwab, City Attorney
9770 Culver Boulevard
Culver City, California 90232-0507

Copy to: Kane, Ballmer & Berkman
Attn: Kendall D. Levan, Esq.
515 S. Figueroa Street; Suite 780
Los Angeles, California 90071

To Consultant: MOX Networks, LLC
Attn: Lorin Dorco, CEO
9920 Jefferson Boulevard
Culver City, California 90232

Copy to: MOX Networks, LLC
Attn: Legal Department
9920 Jefferson Boulevard
Culver City, California 90232

B. Any notice or other communication shall be deemed received immediately if delivered by hand and shall be deemed received on the fifth (5th) calendar day from the date it is postmarked if delivered by registered or certified mail or on the next business day following deposit with the overnight mail carrier (a general business day on which the Culver City City Hall is closed shall not constitute a business day in this section).

Section 26. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement. Should litigation occur, venue shall be in the Superior Court of Los Angeles County.

Section 27. Litigation Fees. If litigation arises out of this Agreement for the performance thereof, the court shall award costs and expenses, including attorney's fees, to the prevailing Party. In awarding of attorney's fees, the court shall not be bound by any court fee schedule, but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.

Section 28. Integrated Agreement. This Agreement and Attachments represent the entire Agreement between City and Consultant regarding the Network, and is a complete and exclusive statement of the terms of the Agreement. No verbal agreement or implied covenant, including without limitation any preliminary negotiations and agreements, shall be held to vary the provisions of this Agreement.

Section 29. Purchases of Supplies and Materials within Culver City. For work performed, Consultant agrees to seek bids for supplies and materials from businesses located within Culver City, with the intent to make purchases from these businesses if such purchases can be made at competitive rates.

Section 30. No City Assurances. The City neither undertakes nor assumes nor will it have any responsibility or duty to Consultant or to any employee or agent of Consultant to review, inspect, supervise, pass judgment upon or inform Consultant or

any such third party of any matter in connection with the design, development or construction of the Network, whether regarding the quality, adequacy or suitability of the plans, whether or not approved by the City, any labor, service, equipment or material furnished in connection with the Network, any person furnishing the same, or other like matters. Consultant and all employees and agents of Consultant shall rely upon their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Consultant or to any such third party by the City in connection with such matters is for the public purposes of the City, and neither Consultant nor any third party is entitled to rely thereon. Nothing contained in this Agreement shall abrogate, supersede, or nullify any right City has to approve design documents produced by the Consultant as set forth in this Agreement.

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

"CONSULTANT"

MOX NETWORKS, L.L.C.,
a Delaware limited liability company

Dated: _____

By: _____

Name: _____

Its: _____

[SIGNATURES CONTINUE ON THE FOLLOWING PAGE]

"CITY"

CITY OF CULVER CITY,
a charter city of the State of California

Dated: _____

By: _____
John M. Nachbar
City Manager

APPROVED AS TO CONTENT:

By: _____
Michele Williams
Chief Information Officer

ATTEST:

By: _____
Martin Cole
City Clerk

APPROVED AS TO FORM:

By: _____
Carol Schwab
City Attorney

By: _____
KANE, BALLMER & BERKMAN
City Special Counsel

ATTACHMENT NO. 1

SCOPE OF WORK NO. 1

PROJECT MANAGEMENT OF NETWORK
DESIGN AND ENGINEERING

SCOPE OF WORK NO. 1
City of Culver City's Municipal Fiber Network Project

Project Management of Network Design and Engineering

CONSULTANT shall perform all Services outlined in this Scope of Work No. 1 for the Project. CONSULTANT's performance of all Services shall conform to the standards, criteria, terms and requirements of this Scope of Work No. 1 and the Consultant Agreement.

I. SCOPE OF WORK

Task 1.0 – Identify and Assign Required Resources to the Project

- 1.1 CONSULTANT shall designate a program manager to the Project to act as a single point of contact with the City's designated contact for all Project-related communications.
- 1.2 CONSULTANT shall select, and enter into a contract directly with, a qualified engineering contractor(s) to perform the deliverables required by this Scope of Work. All payments due to the engineering contractor shall be the responsibility of CONSULTANT, and the engineering contractor shall have no recourse to the City whatsoever. All contractors/consultants selected and retained by CONSULTANT shall be licensed as required by law and qualified for the services to be provided by each such contractor/consultant for the Project and shall first be approved by the City before Consultant's retention of same.
- 1.3 CONSULTANT shall make available to the engineering contractor all findings, reports and any other documents generated as part of the CONSULTANT's initial advisory engagement with the City to oversee the handhole and conduit inventory and review of GIS data repository and document, pursuant to Contract No. 31500135 between CONSULTANT and the City.

Task 2.0 – Establish Project Timeline and Project Management Tracking and Reporting

- 2.1 CONSULTANT shall deliver a Project timeline to the City that includes the following target milestones:
 - A. Preliminary Design Drawings (reference: Task 5.0):

- i. for City Hall Ring, within forty-five (45) calendar days from CONSULTANT'S receipt of a Notice to Proceed issued by the City.
- ii. for North Ring, within seventy-five (75) calendar days from CONSULTANT'S receipt of a Notice to Proceed issued by the City.
- iii. for South Ring, within ninety (90) calendar days from CONSULTANT'S receipt of a Notice to Proceed issued by the City.

For all Preliminary Design Drawings, the City shall review and provide any comments within fifteen (15) calendar days of submission. The Preliminary Design Drawings shall include a site plan and sections of the Project as they are to be developed and constructed in the City.

B. Construction-Ready Drawings (reference: Task 6.0)

A complete set of Construction-Ready Drawings shall be provided to the City for the City Hall Ring, North Ring, and South Ring within thirty (30) calendar days following the City's approval of the Preliminary Design Drawings for each the City Hall Ring, North Ring, and South Ring. The Construction-Ready Drawings shall be prepared by CONSULTANT as a logical evolution of the City-approved Preliminary Design Drawings.

- 2.2 CONSULTANT shall provide regular Project status reports to the City, identifying known or threatened constraints and mitigation alternatives in advance of the Project Coordination meetings called for by Task 3.1A below.
- 2.3 CONSULTANT, its engineering contractor, and the City shall jointly review the City's proposed capital improvement, public works, or other City development projects, and also any known third party projects of entities with jurisdiction or permits within the City to perform work, for the next five (5) year period to identify and mitigate any potential conflicts with the development and construction of the Project.

Task 3.0 – Coordination, Meetings and Outreach

3.1 Project Meetings

A. CONSULTANT shall conduct bi-weekly Project Coordination meetings with the City, other affected agencies and utilities to review the progress of work, obtain additional input and directions, and to ensure that the City's interests are being met.

B. Project Coordination Meetings may be called by the City or CONSULTANT at any time that any party requires discussion of Project issues. CONSULTANT shall prepare minutes of the meeting and submit them to the City. The City has the right to provide modifications to the meeting minutes based on its understanding of the matters discussed.

C. Confer and coordinate with each utility owner as necessary where conflicts may occur.

3.2 Presentation Exhibits

At the direction and request of the City, CONSULTANT shall prepare exhibits for meetings and general use by City staff.

3.3 Mutual Cooperation

The City and CONSULTANT each agree to cooperate with each other in good faith in the design, development and construction of the Project including, without limitation, providing reasonably requested documentation and attending meetings as needed relating to the Project.

Task 4.0 - Proofing of Existing Conduit; Fiber Termination and Cable Inventory

CONSULTANT shall direct and oversee its engineering contractor in the performance of the following sub-tasks; as such, use of the term CONSULTANT below shall refer interchangeably to such engineering contractor. The overall purpose of proofing and inventory work is to measure the likely success of use of the existing conduit and duct system for placement of a future 288-count fiber optic cable with an estimated outside diameter of .80 inches. The City will provide CONSULTANT all existing and known information and documentation reasonably requested by CONSULTANT to assist with the performance of these sub-tasks.

4.1 Conduit and Duct Proofing, continuity testing and tracer tape installation

The work to be performed is as follows:

- A. Open hand holes at the end of each section of conduit, and, using caution and the utmost of care, attempt to manually move existing fiber optic cables and existing rope or mule tape to verify duct or conduit continuity.
- B. Upon verification of continuity of conduit, place new tracer tape.
- C. Measure and record wall-to-wall measurements of all duct and conduit systems identified.

- D. Locate and identify any blockages or breakdowns of the system. The repair of any such blockages or breakdowns is not part of this Task, but may lend itself to onsite performance of this work if identified and approved in writing by the City on a case-by-case basis. These blockages shall be noted and located in the field with a stake, as feasible, to the extent such stake will not create a safety hazard or unsafe condition.
- E. Upon placement of tracer tape, CONSULTANT shall locate the existing duct run using orange telecom-marking paint and orange flags or other markers appropriate to the location and acceptable to the City. CONSULTANT will collect GPS data from these markings for permanent records and input into the GIS database for the City.
- F. This Task does not include proofing any lateral ducts.

4.2 Fiber termination audit and inventory

CONSULTANT shall provide a technician to audit all existing City-owned fiber terminations. The City shall provide reasonable access to any existing and known records available for assistance in identifying the A and Z location of fibers.

A. Fiber panel assignments will be noted; CONSULTANT will identify any transpositions or improper terminations discovered, high-loss connectors or splices, along with any circuit or fiber identification, by physically visiting all termination sites. Working and spare fibers at each location will be identified with all spare fiber being tested bi-directionally for continuity and loss. Pictures and recording of all panel locations by room number and rack locations will be obtained as part of the proofing and inventory.

B. It is anticipated that most of the proofing and inventory work can be performed off the road; however, in the event lane closures are necessary, CONSULTANT will be responsible for coordination and traffic control permitting with the City.

C. The results of the proofing and inventory work will be compiled in a spreadsheet and provided to the City: documenting cable size, number of working fibers and number of spare fibers potentially available for use.

Task 5.0 – Preliminary Design Drawings and Permitting Requests

CONSULTANT shall direct and oversee its engineering contractor in the performance of the following sub-tasks. All drawings, plans and other design documents shall be in accordance with the latest edition of Standard

Specifications for Public Works Construction and telecommunications industry standards applicable to the Project.

5.1 Civil Design Package

Preparation of Preliminary Design Drawings (base sheets) for the entire Network, including roadway geometry, stationing, existing utility locations (by current facility name and current contact information), and preliminary conduit plans for the fiber optic conduits. Drawings will include below-grade utilities and facilities that may interfere with the construction and installation of the new underground conduit system. Drawings shall also include plan views, duct package elevations (when information is available and pertinent within utility supplied atlases) and configurations, handhole locations, handhole penetration locations, limits of excavation, general notes, Project details. The City will provide existing and known utility location information with respect to City-owned utilities; all other utility location information will be obtained by CONSULTANT from the relevant utility.

5.2 Traffic

Preparation of preliminary traffic control/detour plans based on the proposed work.

5.3 Typical Connections

Preparation of preliminary layout for typical building connection. At a minimum, this work shall include servicing from the nearest handhole, conduits, splicing, and data rooms.

5.4 Point of Presence (POP) Construction Design

Preparation of initial layout of locations, and facilities (including dimensioning and preliminary rack locations), space and power requirements, and conduit entering and exiting the facility(ies). Preparation of detailed design drawings for proposed points of presence, including penetrations and junction box placements, conduit pathways, conduit design, mounting details and wall core penetration details.

5.5 Quantity/Cost Estimates and Specifications

Determine and finalize material specifications for handholes, manholes, backfills, concrete / asphalt overlays, sidewalk and landscape restoration, conduit types and sizes, pull ropes, tags, fiber cables, splice cases, pedestals, junction boxes and termination panels. Develop Bill of Materials table for incorporation into design documents. Prepare a preliminary cost estimate based on current unit prices and the draft Bill of Materials table.

5.6 Coordinate with the City to identify necessary permits for the City to obtain as required for development and construction of the Project and a timeline for applying for and receiving such permits. Provide supporting data necessary to the City's efforts.

Task 6.0 – Construction-Ready Design Drawings

6.1 Upon receipt of review comments from the City, the CONSULTANT shall advance the drawings, plans and specifications to final completion including:

- Title Sheet
- Detail sheet
- Civil Plans (roadway, conduits, utility, handholes)
- Fiber Installation Plans (Drawings will include fiber routing, existing and proposed conduit pathways, including manholes/handholes, fiber slack and splice locations, POP locations and demarcations)
- Splicing Plans (including any existing City fiber that needs to be incorporated into the new fiber optic ring design)
- POP Building/Server Rack Plans
- Traffic Control Plans

6.2 Quantities, Cost Estimate and Specifications

CONSULTANT shall update and revise the quantities, cost estimates and specifications to ensure compatibility with the construction-ready documents.

The Project, and more specifically, the Construction-Ready Design Drawings, shall be designed to be capable of being constructed within a materials and labor budget of \$4.5 Million. The foregoing design criteria does not constitute a guarantee that actual construction costs determined during the bid phase will not exceed the estimate.

6.3 CONSULTANT shall submit a signed and approved set of Construction-Ready Design Drawings by a California Registered Engineer suitable for bid advertising (camera ready).

6.4 During the bid phase, upon written request by the City, CONSULTANT shall provide additional engineering and design services on an as-needed basis, including without limitation, assisting the City in responding to requests for clarifications from the prospective bidders.

6.5 During the construction phase, upon written request by the City, CONSULTANT shall provide such engineering and design services as may be

requested by the City to implement change orders necessary for clarification or interpretation of the general construction contract documents or in response to unforeseen circumstances requiring revision to the Construction-Ready Design Drawings. CONSULTANT's engineering contractor shall be available for consultation and additional services on an as-needed basis through Project completion.

Task 7.0 –Complete As-Built Construction Drawings

Following completion of construction of each the City Hall Ring, North Ring, and South Ring, CONSULTANT (through its engineering contractor) shall deliver to the City "as-built" construction complete drawings in hard copy and electronic format [specify format] and ensure that the Network is properly registered with DigAlert.

CITY RESPONSIBILITIES

The City shall be responsible for the following matters in support of this Scope of Work:

1. City of Culver City Permitting (Culver City permits only)
2. CEQA Environmental Review
3. Timely review of drawings and plans, as described in Task 2.0.
4. Production of existing and known data (utility locations, etc.)
(Culver City operated and maintained facilities only).

ATTACHMENT NO. 2

SCOPE OF WORK NO. 2

CONSTRUCTION PHASE SUPPORT

SCOPE OF WORK NO. 2
City of Culver City's Municipal Fiber Network Project

Construction Phase Support

SERVICES TO BE PREFORMED BY CONSULTANT

CONSULTANT shall perform all the Services outlined in this Scope of Work No. 2 for the Project. CONSULTANT's performance of all Services shall conform to the standards, criteria, terms and requirements of this Scope of Work No. 2 and the Consultant Agreement.

I. SCOPE OF WORK

Task 1.0 – Bid Phase Support – Construction and Materials/Equipment

CONSULTANT shall provide technical and administrative support throughout the advertising, bidding and contract award process for Project construction, materials procurement and equipment procurement and installation. Support shall include:

- Preparation of all construction bid documents necessary to develop and construct the Project including, without limitation, draft bidder selection Documents including project technical specifications, fiber acceptance testing parameters, and bill of materials. The required construction bid documents shall be determined by the City in consultation with CONSULTANT. The City shall review and approve all final construction bid documents.
- Preparation of draft responses to contractor questions, requests for clarification, and any bid challenges
- Participation in the pre-bid conference(s)
- Assist City staff in bid evaluation and preparation of contract award documentation
- Preparation of specification requirements for equipment procurement and optical acceptance testing, and support procurement procedures to be determined by the City

Task 2.0 – Coordination, Meetings and Outreach - Ongoing

2.1 Project Meetings

A. CONSULTANT shall conduct bi-weekly coordination meetings with the City, other affected agencies and utilities to review the progress of work,

obtain additional input and directions, and to ensure that the City's interests are being met.

B. Project Coordination Meetings may be called by the City or CONSULTANT at any time that any party requires discussion of Project issues. CONSULTANT shall prepare minutes of the meeting and submit them to the City. The City has the right to provide modifications to the meeting minutes based on its understanding of the matters discussed.

C. Confer and coordinate with each utility owner or operator as necessary where conflicts may occur.

2.2 Presentation Exhibits

At the direction of the City, CONSULTANT shall prepare exhibits for meetings and general use by City staff.

Task 3.0 – Construction Management

3.1. CONSULTANT will perform the following services described in this Task 3.0. To the extent required by applicable law, CONSULTANT will retain a person or entity registered and qualified to provide construction management services in the state of California.

3.2 In conjunction with the City, coordinate, direct and participate in Project pre-construction and construction conferences.

3.3 Maintain complete files of all project documentation, including: design documents, estimates, bid documents, bidder materials, construction contracts, payment invoices, requests for information ("RFI's"), contractor's submittals and drawings, change orders, claims schedules, and correspondence.

3.4 Serve as the City's representative to all prime contractors for the administration of the construction contract(s). When appropriate, make recommendations to the City for exercising the City's rights and prerogatives under the construction contract(s).

3.5 Develop a cost loaded schedule detailing the prime contractor's agreement activities and implement logging and tracking of all project-related information, including contracts, payments, correspondence, and cost worksheet data.

3.6 Schedule and conduct all regular job-site progress meetings, transcribing and distributing meeting minutes, unless otherwise noted or agreed to by the City.

3.7 Serve as the Inspector(s) of Record ("IOR") for each prime contractor's agreement and other technical inspection and testing agencies. File and distribute, as appropriate, all inspection reports.

3.8 Based on CONSULTANT'S reasonable knowledge, information and belief, and, when appropriate, in consultation with the engineering contractor pursuant to Task 6.4 and Task 6.5 of SOW No. 1, CONSULTANT shall provide CITY a general written assurance that the work covered by a payment request meets the standards in the general construction contract. CONSULTANT shall provide a written judgment of the acceptability of the work for payment applications and final acceptance, subject to CITY'S right to overrule CONSULTANT.

3.9 Receive and review the prime contractor's detailed cost-loaded baseline construction schedule for conformance to the Project timeline and construction contract. Review the proposed construction schedule for compliance with construction contract, including, by way of example, acceptance of conduit installation prior to proceeding with fiber installation. Distribute the approved schedule to the City.

3.10 Develop, update, maintain and distribute the Project construction schedule.

3.11 Receive and review the prime contractor's monthly schedule update and progress payment requests. Review and confirm monthly prime contractor's payment requests with the City. Review the progress of construction and observe work in place and stored materials and evaluate the percentage complete of each activity shown on the prime contractor's approved Project schedule and schedule of values. Identify with the prime contractor any current or potential delay(s) to the completion schedule, and require appropriate contractor corrective action, including submittal or recovery schedule(s), where appropriate or advisable.

3.12 Work with the City's representatives in the evaluation of prime contractor change order proposals ("Change Orders") for time and price, and make recommendations for City action. Assist the City in the negotiation of Change Order cost and time extensions, and requirements for documenting Change Orders, and document packaging pertaining to Change Orders. Provide cost estimating, as requested by City.

3.13 Prepare and distribute Project Status Reports in the manner requested by the City, on no less frequent than a monthly basis.

3.14 Perform a claim entitlement analysis of all prime contractor claims, including but not limited to, an analysis of the impact on cost(s) and Project schedule, and prepare recommendations to the City regarding appropriate action and response to prime contractor claims. If requested by the City, negotiate claims from the prime contractor on behalf of the City, including recommendations concerning settlement, in conjunction with and subject to recommendations of City legal consultants.

3.15 Coordinate the receipt and temporary storage of materials and equipment for the Project. Identify long-term storage requirements related to the operation and maintenance of the Network.

3.16 Assist, prepare and coordinate with the City a "punch list" of items pending substantial and final completion and inspection of the Project. Verify to the City the prime contractor(s) completion and corrective action for each punch-list item(s), and recommend actions in the event of contractor's failure to take corrective action or other necessary actions relative to said punch list.

Task 4.0 – Construction Contract Close-Out

4.1 Receive and review operations and maintenance manuals, and warranties and guarantees as required under the contract provisions.

4.2 Receive and review project record drawings and as-built drawings to the City's reasonable requirements, and assist the City in the filing of these documents with the City and other necessary entities (Format of record drawings to be determined, including scope of GIS coordinate mapping.)

4.3. Verify that the prime contractor's obligations are fulfilled and that any liens filed have been released. Make a final review of the Project(s) at the conclusion of all corrective action. Provide a report to the City indicating whether the work is acceptable under the contract documents (including any addenda or change orders), and recommend final payment and the recordation of a Notice of Completion in conjunction with City representatives or staff.

Task 5.0 – Fiber Acceptance Testing

CONSULTANT shall conduct dark fiber acceptance testing in accordance with the dark fiber specifications and acceptance testing procedures set out in the construction bid documents and in accordance with applicable law, and repeat as necessary until compliance with the specifications has been confirmed.

CONSULTANT may require that the prime contractor perform and/or verify such testing. Complete optical time domain reflectometer (OTDR) testing shall be performed on the shipped fiber optic cable reels prior to installation.

Task 6.0 – Equipment Installation and Testing

6.1 CONSULTANT shall coordinate the delivery and installation of the optical equipment procured by the City pursuant to the process outlined in Task 1.0 of this Scope of Work No. 2.

6.2 CONSULTANT shall conduct optical layer acceptance testing in accordance with the equipment procurement specifications developed as part of Task 1.0, and in accordance with applicable law, and repeat as necessary until compliance with the specifications has been confirmed. CONSULTANT may require that the original equipment manufacturer (OEM) perform and/or verify such testing.

ATTACHMENT NO. 3

SCOPE OF WORK NO. 3

PRE-OPERATIONS PLANNING AND
BUSINESS DEVELOPMENT CONSULTING

SCOPE OF WORK NO. 3
City of Culver City's Municipal Fiber Network Project

Pre-Operations Planning and Business Development Consulting

CONSULTANT shall perform all Services outlined in this Scope of Work No. 3 for the Project. CONSULTANT's performance of all Services shall conform to the standards, criteria, terms and requirements of this Scope of Work No. 3 and the Consultant Agreement.

I. SCOPE OF WORK

Task 1.0 – Assist City in Developing a Wholesale Licensing Structure

- 1.1 CONSULTANT shall review and recommend a wholesale licensing structure reflective of current and projected market conditions in Los Angeles County, State of California and technological capabilities of the proposed City-owned fiber optic network.
- 1.2 CONSULTANT shall prepare for recommendation to the City a standard contract with standard terms and conditions for a typical California municipal fiber network project, and industry-standard dark fiber license terms, which recommended contract shall include, without limitation, insurance, indemnification, bonding or other security requirements applicable to service providers for the protection and benefit of the City.
- 1.3 CONSULTANT shall review available comparable pricing from other municipalities and commercial providers and recommend standard pricing structures for the City's wholesale licensing structure.

Task 2.0 – Develop and Implement Sales and Marketing Plan

- 2.1 CONSULTANT shall develop a marketing strategy to identify and target service providers likely to have high interest in the provision of wholesale services to licensees via a license to use dark fiber on the City's fiber optic network.
- 2.2 CONSULTANT shall develop a marketing strategy for broader outreach and general communications to enhance the open access nature of the City's fiber optic network.

Task 3.0 – Establish Processes and Procedures for Ongoing Licensee Acquisition (from initial contact through contract execution)

- 3.1 CONSULTANT shall develop a tracking and reporting process to provide regular status updates to the City on network marketing opportunities and progress.
- 3.2 CONSULTANT shall lead negotiations with potential service providers using the City-approved standard contract documentation developed pursuant to Task 1.0 above, and consult with the City with regard to any requested deviations from the standard documentation, which proposed deviations are subject to the prior approval of the City.
- 3.3 CONSULTANT shall coordinate with the City to establish a contracting work-flow procedure to ensure that all necessary reviews and approvals are obtained from the City prior to presenting a proposed service provider contract to the City for execution.

Task 4.0 – Assist City in Contract Negotiations with Third Party Colocation Providers at Mutually-Agreed Network Point of Presence (POP) Locations

- 4.1 CONSULTANT shall negotiate with the third party colocation providers identified in the final approved network design to obtain rack, space and power on terms and conditions acceptable to the City, in its own discretion.
- 4.2 CONSULTANT shall prepare for recommendation to the City a standard contract with standard terms and conditions for the City's acquisition of rack, space and power that are consistent with similar California municipal fiber network projects. This recommended contract shall include, without limitation, insurance, indemnification, bonding or other security requirements applicable to service providers for the protection and benefit of the City. As applicable, CONSULTANT shall review contract terms presented by the third party colocation providers and provide the City with any recommended modifications.

Task 5.0 – Establish Processes and Procedures for Accounting and Financial Reporting

- 5.1 CONSULTANT shall coordinate with the City to assess and determine the City's requirements for financial reporting, in accordance with applicable law.

- 5.2 CONSULTANT shall develop processes and procedures that support the City's requirements for financial reporting, in accordance with applicable law, and will submit same to the City for approval prior to implementation.

Task 6.0 – Develop Processes and Procedures for Licensee Service Inquiries, Invoicing and Payment Processes

- 6.1 CONSULTANT shall coordinate with the City to review and assess licensee service, invoicing and payment processes requirements and escalation procedures to ensure compliance with City obligations as well as consistency with industry standards where feasible, and in compliance with applicable law.
- 6.2 CONSULTANT shall develop processes and procedures to intake and resolve licensee service issues that arise outside the appropriate scope of the Network Operations Center (NOC).
- 6.3 CONSULTANT shall develop and recommend processes and procedures for invoicing and payment processes, in accordance with applicable law, and will submit same to the City for approval prior to implementation.

Task 7.0 – Network Operations Center (NOC) On-Boarding

The following tasks and deliverables will be staged to occur prior to Task 7.0, Equipment Installation and Testing.

The acronyms used in this Task 7.0 are as follows:

- IP means Internet Protocol
- SNMP means Standard Network Management Protocol
- OSP means Outside Plant
- ISP means Internet Service Provider
- O&M means Operations and Maintenance
- IRU means Indefeasible Right of Use and refers to a long-term, prepaid license for the exclusive use of a specified number of fibers within the Network
- FLM means First Line Maintenance

- 7.1 CONSULTANT will develop and deliver a Transport Network Design Package, including:
- Node Engineering Statement of Work
 - IP assignment, access to each node, visibility
 - SNMP collection, polling and reporting

7.2 CONSULTANT will develop and deliver a Management Network Design Package, including:

- IP assignment and routing
- Test access, routing and failure
- SNMP collection, polling and reporting

7.3 CONSULTANT will develop and deliver a Circuit Management Package, including:

- OSP Fiber
- ISP Fiber
- Circuit ID per segment
- Monitoring tool data base entry

7.4 CONSULTANT will develop and conduct an Operational Readiness Test, including test calls and simulation runs with:

- OSP Fiber – O&M Operator
- IRU Carriers – 3rd Party Operator
- Equipment - FLM Operator

ATTACHMENT NO. 4

SITE PLAN

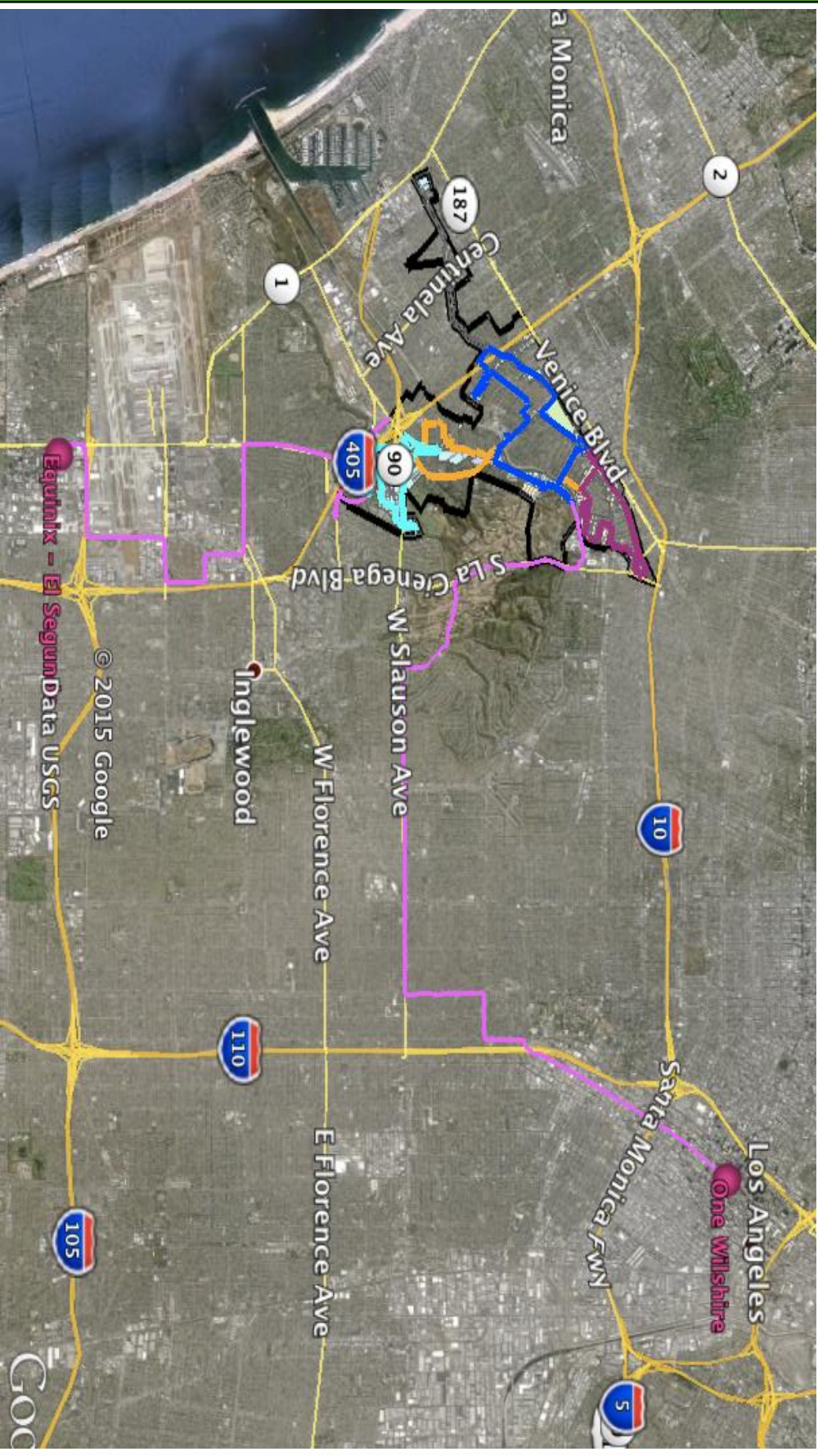


THE CITY OF CULVER CITY
INFORMATION TECHNOLOGY DEPARTMENT
GEOGRAPHIC INFORMATION SYSTEMS

9770 CULVER BLVD
CULVER CITY, CA 90232
TEL: 310-253-5976



Attachment 4 – Site Map (Network Backbone & Long Haul Routes)



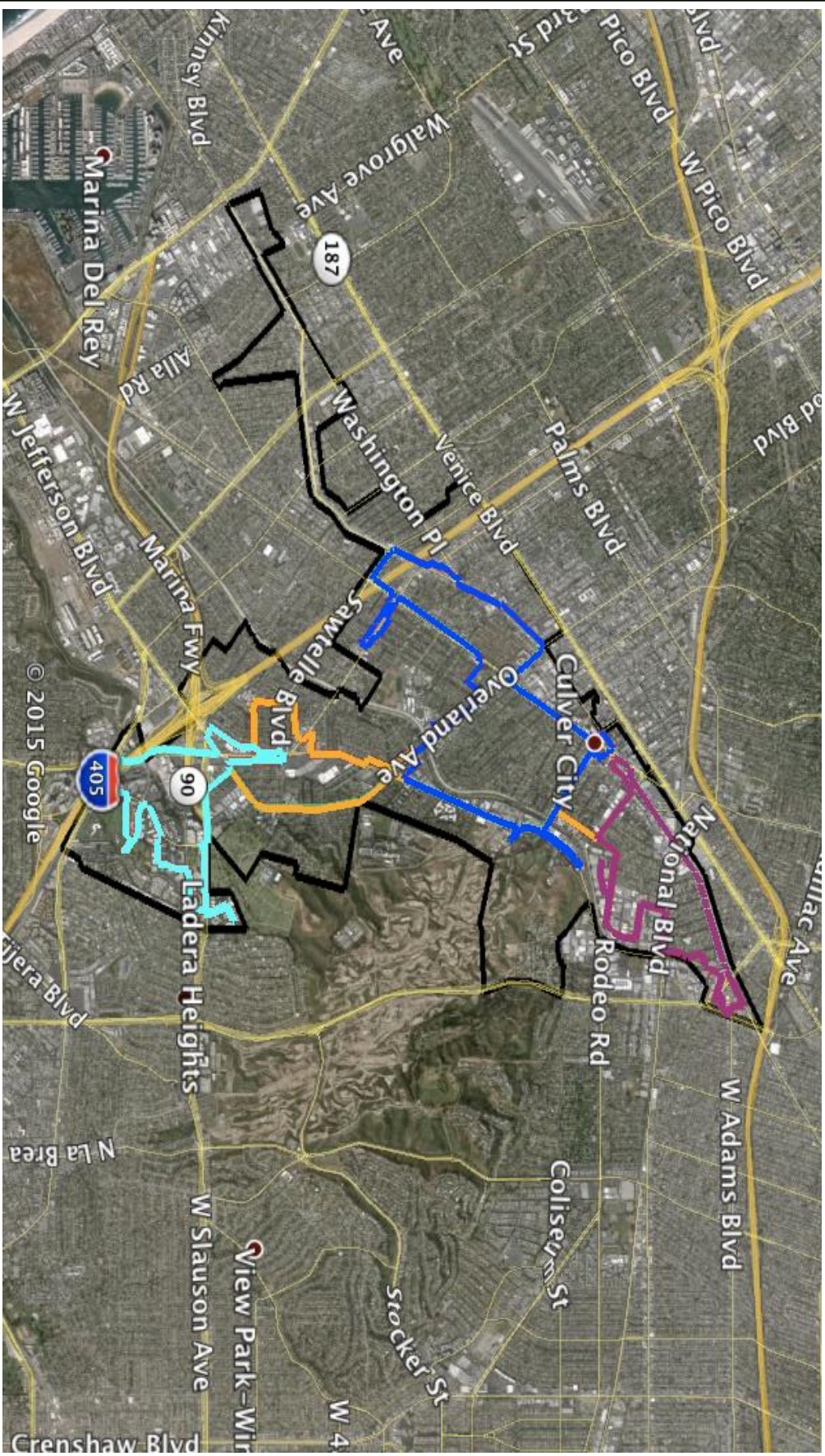


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9770 CULVER BLVD
CULVER CITY, CA 90232
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Attachment 4 – Site Map (Network Backbone)



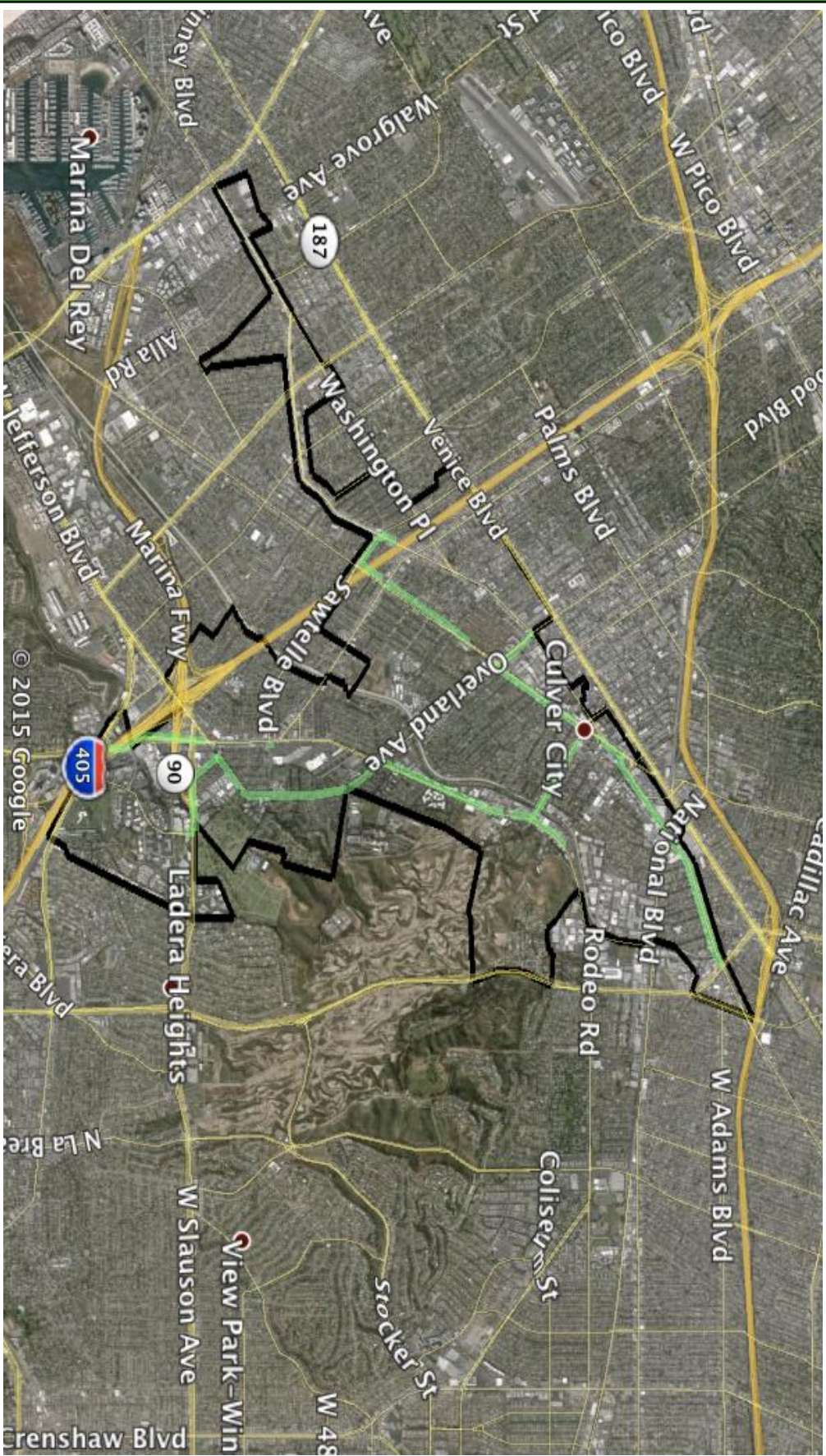


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CULVER CITY, CA 90232
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Attachment 4 – Site Map (Area of Existing Infrastructure)



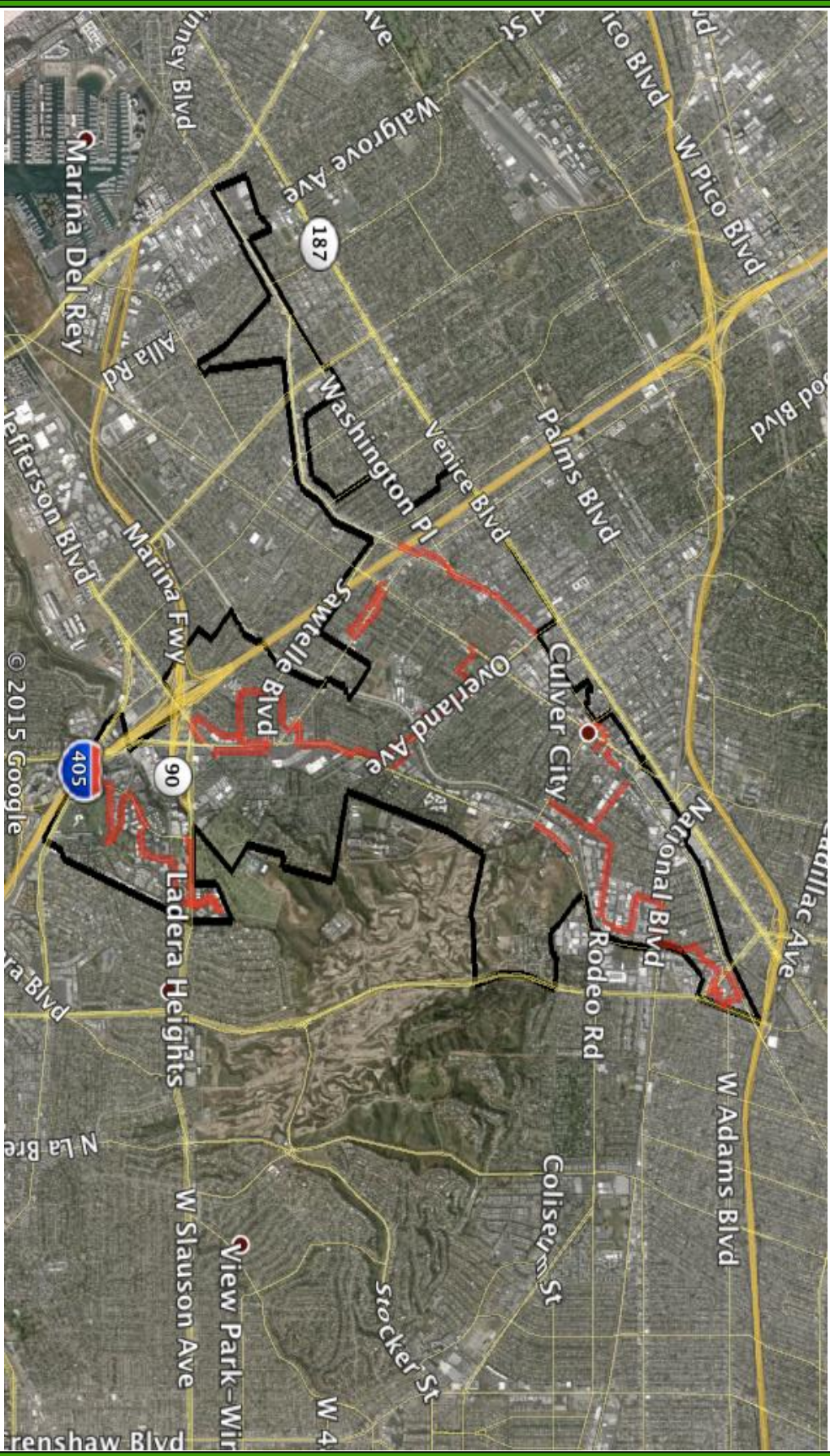


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Attachment 4 – Site Map (Area of New Construction)



ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

ATTACHMENT NO. 5

SCHEDULE OF PERFORMANCE

	SOW Ref.	Action to be Taken	Time for Performance (All days listed as Business Days)
1.	SOW No. 1, Tasks 2, 4 and 5	Consultant submission of Preliminary Design Drawings	Central Ring – 65 business days from Notice to Proceed South Ring – 75 business days from Notice to Proceed North Ring – 85 business days from Notice to Proceed Building Laterals – 55 business days following City approval of Construction-Ready Design Drawings of all Rings
2.	SOW No. 1, Tasks 2, 4 and 5	City review of Preliminary Design Drawings	15 business days
3.	SOW No. 1, Tasks 2, 4 and 5	If required: Consultant revision of Preliminary Design Drawings and re-submission to City	5 business days
4.	SOW No. 1, Tasks 2, 4 and 5	City review of revised Preliminary Design Drawings	5 business days
5.	SOW No. 1, Task 2 and 6	Consultant submission of Construction-Ready Design Drawings	5 business days following City approval of Preliminary Design Drawings, by Ring if mutually agreed by City and Consultant
6.	SOW No. 1, Task 2 and 6	City review of Construction- Ready Design Drawings	15 business days
7.	SOW No. 2, Task 1	Consultant submission of Construction Bid Documents to City	5 business days following City approval of Construction-Ready Design Drawings

8.	SOW No. 2, Task 1 and 2	City review of Construction Bid Documents	15 business days
9.	SOW No. 2, Task 1 and 2	City selection of Construction Contractor	30 business days following City's publishing of Construction Bid
10.	Consultant Agreement, Section 10.A	Consultant and City enter into (i) Operations, Maintenance and Business Development Agreement and (ii) License and Colocation Services Agreement	Prior to City awarding Construction Contract
11.	Consultant Agreement, Section 10.B	Consultant to assist City with remaining agreements for operation of Network, including agreements with carrier hotels/interconnect sites and with network nodes for colocation services	No later than Completion of Construction
12.	SOW No. 1 Task 5.6	Permitting Culver City Jurisdiction	55 business days following City approval of Construction-Ready Design Drawings, by Ring if mutually agreed by City and Consultant; Subject to approval by City in its municipal and regulatory capacity.
13.	SOW No. 1, Task 5.6, and Per Construction Bid	Permitting Non-Culver City Jurisdiction	55-85 business days following City approval of Construction-Ready Design Drawings, by Ring if mutually agreed by City and Consultant; Subject to Notice to Proceed
14.	SOW No. 2, Task 3	Commencement of Construction	20 business days from City selection of Construction Contractor, subject to obtaining all necessary permitting
15.	SOW No. 2, Tasks 3 and 4	Construction (conduit and vault installation, cable installation)	Average 75 business days per Ring, following completion of permitting; Subject to Notice to Proceed

16.	SOW No. 2	Materials procurement for Network	Ongoing, to be delivered prior to Commencement of Construction
17.	SOW No. 2	Completion of Construction	12 months following Commencement of Construction
18.	SOW No. 2, Tasks 5 and 6; SOW No. 1, Task 7	Fiber splicing, termination and testing; Consultant submission of Fiber Test Results, OSP and ISP Record Drawings (P.E. stamped hard copies, soft copies in AutoCAD and GIS formats), and Fiber Documentation to City	20 business days following Completion of Construction
19.	SOW No. 2, Tasks 5 and 6; SOW No. 1, Task 7	City review Fiber Test Results, OSP and ISP Record Drawings (P.E. stamped hard copies, soft copies in AutoCAD and GIS formats), and Fiber Documentation	15 business days
20.	SOW No. 1, Task 7	Consultant complete As-Built Construction Drawings	15 business days following Completion of Network
21.	SOW No. 1, Task 7	City review As-Built Construction Drawings	15 business days
22.	SOW No. 3, Tasks 1-3, 5	Sales consulting, administrative operations planning and procedures	Ongoing
23.	SOW No. 3, Task 4	Consultant assist City with contract negotiations with third party colocation providers at mutually-agreed Network point of presence (POP) locations	Ongoing, third-party contracts to be executed prior to Commencement of Construction except as otherwise determined by City in its sole discretion
24.	SOW No. 3, Task 4	Installation Make-Ready Activities for 3 rd Party Existing Colocation (Equinix, Coresite (One Wilshire), NantWorks)	85 business days prior to fiber delivery; No later than Completion of Construction

25.	SOW No. 3, Task 4	Construction and Installation Make-Ready Activities for Culver Studios, or other location as mutually agreed to by City and Consultant	150 business days prior to fiber delivery; No later than Completion of Construction
26.	SOW No. 3, Task 4	Construction and Installation Make-Ready Activities for Culver City Firehouse #3, or other location as mutually agreed to by City and Consultant	150 business days prior to fiber delivery; No later than Completion of Construction
27.	SOW No. 3, Task 7	Network Operations Center (NOC) On-Boarding	Ongoing; No later than Completion of Construction

In accordance with Section 7 of the Consultant Agreement, dates provided in this Schedule of Performance are subject to revision from time to time as mutually agreed upon in writing by the City and Consultant.

ATTACHMENT NO. 6

INSURANCE REQUIREMENTS

ATTACHMENT NO. 6
INSURANCE REQUIREMENTS

As required by Section 14 of the Agreement, Consultant and any third party consultants retained by Consultant to design or provide additional assistance for the Network, as further provided in Section 1.7 below, shall procure and maintain, at their sole cost and expense, with no cost or expense to the City of Culver City:

1.1 Professional Liability. Consultant shall obtain for the benefit of the Network and services provided under the Agreement professional liability insurance having a minimum limit in the aggregate of \$2,000,000 for each claim, and an aggregate limit of \$2,000,000 for all claims arising out of services performed under the Agreement. Such insurance shall be maintained for a period of three (3) years after completion of the services. The professional liability policy shall not exclude bodily injury or property damage. The professional liability deductible or SIR shall not exceed \$25,000.

1.2 Commercial Liability and Other Insurance. At all times while the Agreement is in effect, Consultant shall maintain in force:

1.2.1 Commercial general liability insurance, including insurance against assumed or contractual liability of the Consultant, with a combined single limit for each occurrence of not less than \$5,000,000 (by combination of primary and excess coverage) with respect to claims and damages arising out of personal injury, bodily injury, accident, sickness, disease, death, advertising injury, or property damage. The commercial general liability policy deductible or SIR shall not exceed \$25,000. The commercial general liability policy shall not have a Completed Operations exclusion.

1.2.2 If and to the extent required by law, worker's compensation or similar insurance in amounts, and in a form, as required by California law. Employer's Liability coverage shall also be provided with not less than a \$1,000,000 limit per accident.

1.2.3 Automobile liability insurance to insure Consultant for operations of all owned, hired and non-owned vehicles with limits for each accident of not less than \$5,000,000 (by combination of primary and excess coverage) Combined Single Limit with respect to Bodily Injury, Death and Property Damage.

1.2.4 All insurance required under this Section 1.2, with the exception of Section 1.2.2, shall contain or be endorsed to include a provision that the City of Culver City, its elected and appointed officials, officers, agents, employees and representatives are named as additional insured under each of the involved insurance policies.

1.2.5 All insurance required under paragraphs 1.2.1 and 1.2.3, above, shall be primary, and any insurance carried by the City of Culver City shall be non-contributory.

1.2.6 All insurance and related endorsements required under this Section 1.2 shall be subject to approval and acceptance by the City Attorney.

1.3 Valuable Papers Insurance. Consultant shall maintain valuable papers insurance for all plans, designs, drawings, specifications and documents in an amount not less than thirty-five percent (35%) of the total amount to be paid to Consultant.

1.4 Certificates of Insurance. At the time of commencement of services under the Agreement, certificates of insurance and policy endorsements reflecting the actual maintenance and validity of the insurance policies required by this Attachment shall be filed by Consultant with the City of Culver City. Additionally, Consultant shall file with the City of Culver City the provision in the insurance policies that expressly allows, but does not require, third parties or additional insureds, as applicable, to pay the applicable deductible or SIR if Consultant fails to do so, as described below in Section 1.9. All certificates of insurance shall bear the endorsement "not to be canceled, allowed to lapse or substantially modified without thirty (30) days' prior written notice ten (10) days prior notice for cancellation for nonpayment of premium by certified mail, return receipt requested, to the City of Culver City, Attn: Chief Information Officer, 9770 Culver Boulevard, Culver City, California 90232-0507, by Certified Mail, Return Receipt Requested."

1.5 Term of Insurance. The insurance to be obtained hereunder shall remain in effect for a period of three (3) years from the later date of the City of Culver City's final acceptance of the Network or completion of services by Consultant. Consultant shall have the right to change insurance carriers only if such change is without prejudice to any claim (asserted or unasserted) of the City of Culver City, and this is confirmed in writing to the City of Culver City by the new insurance carrier, whether asserted or unasserted, and Consultant shall deliver a certified copy of such proposed replacement insurance certificate to the City of Culver City at least thirty (30) days prior to the expiration date of Consultant's insurance policy then in effect. If the terms of coverage (other than limits as set forth above) of such policies are reasonably unacceptable to the City of Culver City, Consultant shall, at Consultant's cost and expense, upon notice from the City of Culver City revise its coverage or obtain additional coverage, as the City of Culver City may deem appropriate.

1.6 Waiver of Subrogation.

1.6.1 All insurance listed in this Attachment shall include an endorsement providing a waiver of subrogation stating that the insurer waives its rights of subrogation against the City of Culver City.

1.7 Consultant Requirements. Unless otherwise authorized by Consultant and the City of Culver City in writing, Consultant shall ensure that each consultant retained by the Consultant to design or provide additional assistance for the Network maintains the same insurance coverage as required of Consultant in this Attachment for the same period of time as is required of the Consultant, and Consultant shall provide the City of Culver City with evidence of such insurance upon request, except provided that insurance coverages of each consultant retained by the Consultant shall also include in applicable professional liability insurance contractual liability coverage, and other coverage terms as required by the City of Culver City.

1.8 All insurance listed in this Attachment shall be issued by companies licensed to do business in the State of California, with a claims paying ability rating of “BBB” or better by S&P (and the equivalent by any other Rating Agency) and a rating of A-:VII or better in the current Best’s Insurance Reports.

1.9 All insurance listed in this Attachment shall allow, but not require, third parties or additional insureds, as applicable, to pay the applicable deductible or SIR if Consultant fails to do so. Notwithstanding, however, for each insurance coverage listed above that has a deductible or SIR provision, Consultant shall be responsible for paying the applicable deductible and SIR for all insurance and be liable to the City of Culver City for said payments, in the same manner as those interests would have been protected had the policies not contained a deductible or SIR provision. The deductible or SIR amount shall be shown on any “evidence of insurance” provided to the City of Culver City.

ATTACHMENT NO. 7

RIDER TO CONTRACT

ATTACHMENT NO. 7

CITY CONTRACT REQUIREMENTS RIDER TO CONTRACT

Unless such requirements are waived or modified by the City of Culver City in writing, the various consultant contracts to be entered into by MOX Networks, LLC and selected consultants to design or provide additional assistance for the City of Culver City's Municipal Fiber Network shall include in its written terms the following requirements or meet the following requirements by attachment to and incorporation into each respective consultant contract the following Rider to Contract.

RIDER TO CONTRACT

This Rider to Contract ("Rider") is attached to and incorporated in that certain Services Agreement ("Agreement") dated _____, _____, by and between MOX Networks, LLC, a Delaware limited liability company ("MOX") and _____, a California _____ ("Consultant"). This Rider shall form an integral part of the Agreement and the provisions set forth below shall be controlling notwithstanding anything to the contrary in the Agreement. Wherever possible, the provisions of this Rider and the Agreement shall be construed consistently so that each is given application to the fullest extent possible consistent with its intent. All defined terms used in this Rider and not otherwise defined herein, shall have the meaning prescribed for such term in the Agreement.

1. Consultant hereby agrees that the City of Culver City ("City") shall be an express third party beneficiary of the Agreement including, without limitation, a third party beneficiary of all guaranties, warranties, indemnitees, defend and hold harmless provisions, and remedies provided to MOX pursuant to the terms of the Agreement with the same right and authority to enforce the same either concurrently with or separate from MOX. Loss, waiver or other limitation on such rights as to MOX shall not affect or impact the City's rights under those provisions, nor shall any such loss, waiver or other limitation on such rights as to the City affect or impact MOX's rights under such provisions, and each of MOX and the City shall have the right to separately and independently exercise such rights as its respective interests may appear. Nothing herein shall limit Consultant's right to require MOX's timely performance of the responsibilities of MOX in accordance with the terms of the Agreement. Nothing in this Rider shall modify the provisions of the Agreement requiring and/or providing for the Consultant to take direction from or obtain the approvals of MOX, and Consultant shall rely and act upon such directions and approvals from MOX in accordance with the provisions of the Agreement.

2. Without limitation of Rider 1 above, Consultant specifically acknowledges that the City shall be an express third party beneficiary of the indemnities by Consultant set forth in Section(s) _____ of the Agreement. Consultant further acknowledges and agrees that the Consultant's indemnity obligations under those provisions are not limited by the insurance coverages Consultant is required to maintain and if, for any reason such insurance coverages are insufficient to cover all obligations under those indemnity provisions, Consultant shall nevertheless remain responsible to perform those indemnity obligations in full. Consultant further acknowledges and

agrees that the Consultant's indemnity obligations under those provisions shall survive termination of the Agreement with respect to all obligations whether or not accrued as of the date of such termination.

3. The City shall also be named as an additional insured in an endorsement to the insurance policies required by Section ____ and Exhibit ____ (Insurance Requirements) of the Agreement. Consultant shall furnish the City with evidence that such insurance has been obtained upon execution of this Rider by Consultant, MOX and City.

4. In accordance with Section ____ of the Agreement, Consultant acknowledges that it is acting as an independent contractor in performing its obligations under the Agreement and that, without limitation of said Section ____, Consultant shall in no event be considered an agent or employee of the City, and in no event shall Consultant or any of its employees have any right to participate in any pension plan, insurance, bonus, worker's compensation or similar benefits the City provides for its employees. Consultant shall be responsible to pay and hold the City harmless from any and all payroll and other taxes and interest thereon and penalties therefor which may become due as a result of any obligations, services or other matters performed by Consultant or its agents or employees pursuant to the Agreement.

5. The City neither undertakes nor assumes nor will it have any responsibility or duty to Consultant or to any employee or agent of Consultant to review, inspect, supervise, pass judgment upon or inform Consultant or any such third party of any matter in connection with the design, development or construction of the City of Culver City's Municipal Fiber Network ("Network") improvements, whether regarding the quality, adequacy or suitability of the plans, whether or not approved by the City, any labor, service, equipment or material furnished in connection with the Network, any person furnishing the same, or other like matters. Consultant and all employees and agents of Consultant shall rely upon their own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to Consultant or to any such third party by the City in connection with such matters is for the public purposes of the City, and neither Consultant nor any third party is entitled to rely thereon. Nothing contained in this Rider shall abrogate, supersede, or nullify any right MOX has to approve design documents produced by the Consultant as set forth in the Agreement.

6. Any notices to the City pursuant to the Agreement shall be delivered to the City in the manner provided in Section ____ of the Agreement as the address set forth below:

To City: City of Culver City
Attn: Michele Williams, Chief Information Officer
9770 Culver Boulevard
Culver City, CA 90232-0507

With a Copy to: City of Culver City
Attn: Carol Schwab, City Attorney
9770 Culver Boulevard
Culver City, CA 90232-0507

With a Copy to: Kane, Ballmer & Berkman, Special Counsel
Attn: Kendall D. Levan, Esq.
515 South Figueroa Street, Suite 780
Los Angeles, CA 90071

7. As provided in Section ____ of the Agreement, for the benefit of the City as well as MOX, Consultant shall comply with all applicable state, federal and local laws, ordinances, rules, regulations and requirements governing the Network. Consultant shall also, at its expense, procure and maintain all permits, licenses and certificates which may be required at any time in connection with the performance of any work or services performed by or through Consultant pursuant to the Agreement, including, without limitation, a Culver City business tax certificate. Without limitation of the foregoing, Consultant specifically acknowledges and agrees that it shall be responsible for complying with all prevailing wage requirements applicable to the Consultant's services under California Labor Code Section 1720 et. seq., including any work performed by employees, agents or consultants of Consultant pursuant to the Agreement, and including without limitation complying with applicable requirements of California Senate Bill No. 854 signed into law on June 20, 2014.

8. Consistent with Section ____ of the Agreement, Consultant specifically acknowledges and agrees that the City shall be the sole owner of any and all computations, reports, plans, drawings, studies, specifications, design documents, correspondence and/or other pertinent data, information, documents and computer media, including disks and other materials gathered or prepared by Consultant or caused to be gathered or prepared by Consultant with respect to the Network, and Consultant shall deliver such materials, including without limitation the originals thereof, to the City within ten (10) calendar days after a written request is made by the City (including copyright and intellectual property rights) without obligation to Consultant, whether the Network is implemented or not, and whether or not the Agreement is terminated for any reason. The City shall be the owner of all design or other work product produced by any third party consultant whose services are retained by Consultant for the Network, and Consultant shall deliver such materials to the City within the time frame described in this section when the City provides Consultant a written request for such materials. In addition to performing all services required by the Agreement, all written documents that are intended for public review shall be provided to the City by Consultant in a format suitable for posting on the internet. Consultant shall be deemed to have irrevocably assigned to the City in perpetuity with no reserved or retained rights in any other persons or entities, all copyrights to such documents. The City hereby grants to the Consultant a license, revocable at will of the City, to use and copy such documents during the term of the Agreement for the sole purpose of performing the services required under the Agreement.

9. In maintaining its records of services required by the Agreement and any reimbursable expenses permitted by the Agreement, Consultant shall maintain sufficiently detailed records of the work performed that the calculation of the costs and expenses attributable to the Network and of Consultant's services performed can be identified and distinguished from the remaining scope of work to be performed by Consultant pursuant to the Agreement.

10. Consultant acknowledges and agrees that Consultant shall have no rights or remedies against the City for any payments due by MOX to Consultant under the Agreement or for the performance of any of MOX's obligations under the Agreement, and the City's execution of this

Rider shall not be construed or interpreted in any way as the City's agreement or consent to be subject to MOX's obligations under the Agreement or to be a guarantor for the performance of MOX's obligations under the Agreement. The City shall have no liability whatsoever to Consultant due to the City's execution of this Rider or otherwise.

11. In connection with performance and implementation of the Agreement, Consultant agrees that there shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises. Without limitation of the foregoing, Consultant further certifies and agrees that all persons employed or applying for employment by it and all of its subcontractors, sub-consultants, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, sexual orientation, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq., the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, et seq., the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, et seq., 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, et seq., the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, et seq., and all other antidiscrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended. Consultant shall allow representatives of the City access to its employment records related to the Agreement during regular business hours to verify compliance with these provisions when so requested by the City.

12. In connection with performance and implementation of the Agreement, Consultant agrees to reasonably coordinate its performance of the services as necessary with other consultants retained by MOX or the City for the Network.

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13. There shall be no modification, waiver or other alteration or change to the provisions of this Rider without the written consent of all of the parties hereto. In order to evidence their agreement to the provisions of this Rider and their incorporation into the Agreement in accordance with the terms above, Consultant, MOX and City have separately executed this Rider below.

“MOX”

MOX Networks, LLC,
a Delaware limited liability company

Dated: _____ By: _____
Name: _____
Its: _____

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“CITY”

CITY OF CULVER CITY,
a charter city of the State of California

Dated: _____

By: _____
John M. Nachbar
City Manager

APPROVED AS TO CONTENT:

By: _____
Michele Williams
Chief Information Officer

ATTEST:

By: _____
Martin R. Cole, City Clerk

APPROVED AS TO FORM:

By: _____
Carol Schwab
City Attorney

By: _____
KANE, BALLMER & BERKMAN
City Special Counsel

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“CONSULTANT”

_____,
a California corporation
**see notes below*

Dated: _____ By: _____
Name: _____
Title: _____

Dated: _____ By: _____
Name: _____
Title: _____

*Notes: This document must be executed by the Corporation’s Chief Executive Officer, President or Vice-President, on the one hand, and the Corporations’ Chief Financial Officer, Treasurer, Assistant Treasurer or Secretary on the other hand.

ATTACHMENT NO. 8

SCHEDULE OF COMPENSATION

ATTACHMENT NO. 8**SCHEDULE OF COMPENSATION**

Scope of Work No. 1 – Network Design and Engineering

Description	Cost	Payment Schedule
MOX - Consulting Services: Services related to inventory of existing assets, finalizing the Network design, assisting with Engineering, Project Management	\$90,000	50% at City's Notice to Proceed with SOW #1 50% upon satisfactory completion of SOW #1, including completion of applicable Engineering Services of HBK
HBK – Consultant of MOX, payable through MOX - Engineering Services: -Preliminary Design Drawings -Construction Ready Drawings -Civil Design Package -As-Built Construction Drawings	\$620,500	Deliverable based, billed as performed Deliverables will be mutually determined by City & Consultant Not to exceed cost estimate
TOTAL Scope of Work No. 1	\$710,500	

Scope of Work No. 2 – Construction Phase

Description	Cost	Payment Schedule
MOX - Consulting Services: -Assist City with drafting construction bid documents -Assist with selecting qualified construction vendor -Project Management services	\$60,000	50% at City's Notice to Proceed with SOW #2 50% upon satisfactory completion of SOW #2
MOX – Construction Management	\$675,592 (15% of construction cost – current estimate 4,503,943)	15% invoiced concurrent with invoicing of construction contract

ATTACHMENT NO. 8

SCHEDULE OF COMPENSATION

MOX – Installation of Networking Optical Equipment	\$280,000	100% upon installation completion and completion of acceptance testing
TOTAL Scope of Work No. 2	1,015,592	

Scope of Work No. 3 – Pre-Operations, Planning and Business Development

Description	Cost	Payment Schedule
MOX - Consulting Services: -Services related to the development of a wholesale licensing structure; development and implementation of a sales and marketing plan. -Establish process and procedures for: ongoing customer acquisition, accounting and financial reporting, billing, collections and customer service inquiries. -3rd party negotiations -Establish colocation, planning for implementation of the Network Operations Center (NOC)	\$657,986	Invoiced and paid monthly. Invoicing shall begin 30 calendar days after City's Notice to Proceed with SOW #1. Payments shall be phased in accordance with the Schedule as detailed in the table 1 below. Upon City's Notice to Proceed with SOW #4, SOW #3 shall be deemed complete and no further costs for services under SOW #3 shall be incurred by City.
TOTAL Scope of Work No. 3	\$657,986	
CUMULATIVE TOTAL for Scope of Work Nos. 1, 2, and 3	\$2,384,078	

Table 1 – Monthly Payment Schedule

MONTH	1	2	3	4	5	6	7	8	9	10	11	12
OPERATIONS	\$19,097	\$19,097	\$19,097	\$30,245	\$30,263	\$30,280	\$30,298	\$30,316	\$30,335	\$30,353	\$30,372	\$30,390
ENGINEERING	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$18,581	\$18,590	\$18,599	\$18,608	\$18,618
ADMINISTRATIVE	\$0	\$0	\$0	\$0	\$0	\$24,929	\$24,945	\$24,961	\$24,978	\$24,994	\$25,011	\$25,028
SALES	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
TOTAL	\$24,097	\$24,097	\$24,097	\$35,245	\$35,263	\$60,209	\$60,243	\$78,858	\$78,902	\$78,947	\$78,991	\$79,036

ATTACHMENT NO. 8

SCHEDULE OF COMPENSATION

Table 2 – Annual Payment Summary

Calendar Month		Year 1
NETWORK MANAGEMENT STAFF		
	OPERATIONS	\$330,144
	ENGINEERING	\$92,996
	ADMINISTRATION	\$174,846
	SALES CONSULTING	\$60,000
ANNUAL TOTAL		\$657,986