

FIRST AMENDMENT TO  
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

FIRST AMENDMENT TO  
CONSULTANT AGREEMENT FOR SERVICES RELATING TO  
THE CITY OF CULVER CITY'S MUNICIPAL FIBER NETWORK

(City Contract No. \_\_\_\_\_)

THIS FIRST AMENDMENT TO CONSULTANT AGREEMENT FOR SERVICES RELATING TO THE CITY OF CULVER CITY'S MUNICIPAL FIBER NETWORK ("First Amendment") 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"). The City and MOX are also referred to herein individually as a "Party" and collectively as the "Parties".

**RECITALS**

A. The City has begun the process of designing, building and expanding 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. The City's proposed fiber broadband network 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

C. Based on MOX's extensive experience with developing fiber broadband networks and to facilitate the development of the proposed Network, the City and MOX entered into that certain Consultant Agreement for Services Relating to the City of Culver City's Municipal Fiber Network (City Contract No. 31600164) dated November 10, 2015 ("Agreement") wherein MOX agreed to provide in accordance with the 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

D. The Agreement contemplates that, upon completion of construction of the Network, the City will retain MOX and MOX will provide, pursuant to a separately negotiated agreement by the Parties, 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; and

E. During the design of the proposed Network, the Parties have determined that it may be more beneficial for the City to require the selected construction contractor of the Network or an entity other than MOX to perform certain outside plant ("OSP") maintenance services on all or part of the Network, such as locates, maintenance and repair of the Network fibers and/or splice points, for the first year or so upon completion of construction of the applicable portions of the Network; and

F. The Parties now desire to amend the Agreement to provide the City with options in the selection of the vendor(s) to perform certain OSP maintenance services on all or part of the Network upon completion of construction of the applicable portions of the Network and also to provide certain administrative authority to the City Manager or his designee to issue interpretations, waive provisions and enter into amendments of the Agreement on behalf of the City, all as hereinafter provided.

## **AGREEMENT**

**NOW THEREFORE**, in consideration of the foregoing Recitals, the mutual covenants and agreements contained in this First Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and MOX hereby agree to amend the Agreement as follows:

1. Options for Maintenance Services of Network. Sections 1(B), 3, 10(A) of the Agreement are hereby amended to allow the City, in the City's sole discretion determined by and through the City Manager or his designee, with the options to retain the services of the selected construction contractor or other vendor(s) to perform certain OSP maintenance services on all or part of the Network upon completion of construction of the applicable portions of the Network, for any period of time, as determined by the City Manager or his designee. In amplification of the aforementioned sentence and notwithstanding anything contrary in the Agreement, the City is expressly permitted under the Agreement pursuant to this First Amendment, and MOX acknowledges and agrees that the City is expressly permitted under the Agreement pursuant to this First Amendment, to select in its sole discretion the vendor(s) other than MOX to perform OSP maintenance services on all or part of the Network for any period of time.

2. Administrative Authority of City Manager or Designee. A new Section 31 is hereby added to the Agreement and shall read as follows:

Section 31: Administration; Administrative Authority of City Manager or Designee. This Agreement shall be administered by the City Manager or his designee following approval of this Agreement by the City. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City, the City Manager or his designee is authorized to act on behalf of the City unless specifically provided otherwise or the context should require otherwise. Whenever a reference is made in this Agreement to an action, finding or approval to be undertaken by the City Manager, the City Manager's designee is authorized to act on behalf of the City Manager. The City Manager or his designee shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses of the proposed Network, or substantially change the manner of development of the proposed Network, or increase the costs of the proposed Network as set forth in the budget for the Network, each as has been approved by the City Council. Notwithstanding the foregoing, the City Manager or his designee may in his or her sole and absolute discretion refer any matter to the City Council for action, direction or approval.

3. Miscellaneous.

(a) Effect of First Amendment. Except to the extent the Agreement is modified by this First Amendment, the remaining terms and conditions of the Agreement shall remain unmodified and in full force and effect. In the event of conflict between the terms and conditions of the Agreement and the terms and conditions of this First Amendment, the terms and conditions of this First Amendment shall prevail and control.

(b) Entire Agreement. The Agreement and Attachments, together with this First Amendment, embodies the entire understanding between the City and MOX with respect to its subject matter and can be changed only by an instrument in writing signed by the City and MOX.

(c) Counterparts. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one in the same First Amendment.

(d) Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this First Amendment. Should litigation occur, venue shall be in the Superior Court of Los Angeles County.

(e) Litigation Fees. If litigation arises out of this First Amendment 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.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the Parties have executed this First Amendment 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