TO: Honorable Mayor and City Council  DATE: August 24, 2020
FROM: Matt Bronson, City Manager
PREPARED BY: Bruce Buckingham, Community Development Director
           David Hale, City Attorney
           Greg Ray, City Engineer/Public Works Director
SUBJECT: Fiber Optic Cable Easement Agreement with RTI Infrastructure, Inc.

RECOMMENDATION

Approve a Fiber Optic Cable Easement Agreement with RTI Infrastructure, Inc. for installation of telecommunications cables in the City’s rights-of-way, authorize the City Manager and City Attorney to negotiate any final and additional terms and conditions of the agreement necessary to achieve the business terms defined herein, and authorize the Mayor to execute the agreement on behalf of the City.

BACKGROUND

RTI Infrastructure, Inc. is proposing the installation of a conduit that would contain up to four fiber optic cables carrying telecommunications data between the United States and several Asian Pacific destinations including Singapore, Guam, Hong Kong, and Australia (reference Attachment 2). The project-related work would be in both terrestrial (land) and marine (ocean) areas on and offshore of Grover Beach; therefore, there are multiple permitting agencies necessary to entitle the project including the California State Lands Commission (CSLC), California Coastal Commission, California Department of Parks and Recreation, and the City of Grover Beach. The mitigated negative declaration for the project was prepared by CSLC as the lead agency and can be viewed at https://www.slc.ca.gov/ceqa/rti-grover-beach/. RTI has installed similar fiber optic cables in Hermosa Beach in Los Angeles County and Manchester in Mendocino County.

The applicant has obtained all the necessary entitlements including the Planning Commission approval of Development Application 20-09 for a Coastal Development Permit and Use Permit on June 24, 2020 for the area within the city’s jurisdiction (reference Attachment 4 for the staff report and adopted resolutions). The Planning Commission’s approval is contingent upon the Council’s approval of the Fiber Optic Cable Easement Agreement which provides the required terms of use that would allow for the construction and installation in the City’s rights-of-way.

The City’s jurisdiction for this project covers the terrestrial portion of the project beginning where the four fiber optic cables exit the cable landing site located in the Pismo State Beach parking lot near Fin’s Restaurant and terminating at the existing cable landing station building for Pacific Crossing building located at 948 Huber Street as shown on Attachment 3. This building is used for similar transoceanic telecommunications cables that were installed in 2000 by Pacific Crossing. The City rights-of-way subject to this Fiber Optic Cable Easement begins at the intersection of Brighton Avenue and Front Street, continuing east on Brighton Avenue, turning south on North 6th Street, turning west on Trouville Avenue, turning south on South 7th Street,
crossing Farroll Road and terminating at the Pacific Crossing building. From here, the telecommunications data would be connected into the broader telecommunications network with onward connectivity to major metropolitan areas such as Los Angeles and the Bay Area.

The fiber optic cables would be pulled through the conduit in up to four separate phases. The underground conduit infrastructure would be installed as part of phase 1 and would consist of one conduit approximately 10 inches in diameter that would contain up to four fiber optic cables buried at least 4 feet deep with periodic manholes on one side of the streets. The conduit would be installed using horizontal directional drilling for the entire conduit system. Staff has worked with the applicant to avoid construction on recently repaired local streets.

While residents and businesses within the city cannot directly connect to these cables, the City receives a direct benefit through an easement agreement that identifies a revenue amount for accessing City rights-of-way. The City Attorney and City staff have worked with the applicant to draft a Fiber Optic Cable Easement Agreement that provides the terms and compensation for the use of the City’s rights-of-way similar to agreements for other fiber optic projects (reference Attachment 1). The Agreement provides a non-exclusive easement for the fiber optic cables and an exclusive easement for the construction area. The term of the Agreement is 25 years beginning the date the first cable becomes operational with two five-year extensions that may be exercised by RTI Infrastructure.

In exchange for the rights granted by the Agreement, the City would receive $100,000 upon the first cable becoming operational following construction and thereafter would receive $100,000 annually on the anniversary date the cable became operational. Each subsequent fiber optic cable would generate the same $100,000 per cable annually for an aggregate total of up to $400,000 annually if all four cables eventually become operational. RTI Infrastructure is moving forward with construction beginning in September with initial installation of the first cable which is anticipated to be operational before the end of the 2020.

**FISCAL IMPACT**

The agreement would initially provide the City’s General Fund with $100,000 in annual revenue upon operation of the first fiber optic cable for 25 years with the potential for two five-year extensions. Each subsequent fiber optic cable if installed would provide an additional $100,000 in annual revenue for the term of the agreement. An annual CPI adjustment would occur for all cables installed.

**ALTERNATIVES**

The Council has the following alternatives to consider:

1. Approve a Fiber Optic Cable Easement Agreement with RTI Infrastructure, Inc. for installation of telecommunications cables in the City’s rights-of-way, authorize the City Manager and City Attorney to negotiate any final and additional terms and conditions of the agreement necessary to achieve the business terms defined herein and authorize the Mayor to execute the agreement on behalf of the City.; or

2. Provide alternative direction to staff.

**PUBLIC NOTIFICATION**

The agenda was posted in accordance with the Brown Act.
ATTACHMENTS

1. Fiber Optic Cable Easement Agreement
2. Project Overview Map
3. Project Location Map
4. Planning Commission Staff Report & Resolutions
FIBER OPTIC CABLE EASEMENT AND ASSOCIATED CONSTRUCTION EASEMENT

THE CITY OF GROVER BEACH, hereinafter referred to as Grantor, for the consideration specified in this Easement Agreement, does hereby grant to RTI Infrastructure, Inc., a California Corporation, and its successors and assigns, hereinafter referred to as Grantee, a non-exclusive easement for fiber optic cables purposes and an exclusive easement for construction purposes as provided below. These easements consist of the following attached and incorporated parts:

Section 1 Summary of Basic Provisions
Section 2 Special Provisions
Section 3 Description of Cable Easement Area
Section 4 General Provision
Section 1
SUMMARY OF BASIC PROVISIONS

MAILING ADDRESSES:

RTI, Infrastructure, Inc.
288 Bush Street, #77
San Francisco, CA 94104
Attn: ________________, Chief Executive Officer

City of Grover Beach
154 S. 8th Street
Grover Beach, CA 93433
Attn: City Manager

LOCATION:

Through certain City public rights-of-way in the locations described in Section 3.

LAND USE OR PURPOSE:

The construction, installation, operation, maintenance, and use of no more than four fiber optic cable systems. Such improvements will provide additional capacity for global voice and data transmission and global access to planned and existing land-based communication networks in the project area.

TERM:

Twenty-Five (25) years with two five-year options that may be exercised by Grantee.

CONSIDERATION FOR EASEMENT WITHIN THE PUBLIC RIGHT OF WAY:

Consideration paid for the easement to use public rights of way by the four cable systems shall aggregate to a lump sum amount of $400,000.00 plus annual payments for the four cable systems totaling $400,000.00. The schedule of payments will be in accordance with Section 2.5.
2.1 Fiber Optic Cables Easement

Grantor for itself and for its successors and assigns, hereby grants, establishes and conveys to Grantee, its successors and assigns a nonexclusive easement (the "Cable Easement") along, over, under and across the property described in Section 3 (the "Cable Easement Area") for the purposes of installing, using, operating, maintaining, upgrading, repairing, modifying, relocating and removing no more than four fiber optic cable systems and any related appurtenances and equipment, which appurtenances and equipment include, without limitation, conduit and manholes, power cables (collectively, the "Cables"). The terrestrial, portion of the Cables shall be located underground as described in the certified mitigated negative declaration. Grantor also grants to Grantee access to, over and across the Cable Easement Area to the extent reasonably necessary to effectuate any of the purposes for which this Cable Easement is granted. Each Cable shall be laid (or relocated, if necessary) within reasonable proximity to the location described in Section 3.

Additionally, the parties agree that the description of the Cable Easement Area will be conformed to match a centerline identified by the precise location of each Cable disclosed by its "as built" survey required under Section 4.1.

2.2 Construction Easement

During periods of construction of each of the four cable systems, Grantor, for itself and for its successors and assigns, hereby grants, establishes and conveys to Grantee, its successors and assigns a temporary exclusive easement (the "Construction Easement") along, over, under and across the Property described as the Construction Easement Area in Section 3 and shown schematically in Section 3 (the "Construction Easement Area") for the purposes of installing, constructing and locating each Cable. Grantor also grants to Grantee access to, over and across the Construction Easement Area to the extent reasonably necessary to effectuate any of the purposes for which this Construction Easement is granted. The temporary Construction Easement for each Cable shall terminate 30 days after its "System Operational Date", as defined in Section 2.11.

2.3 Term

Except as otherwise provided herein, the term of this Cable Easement is twenty-five (25) years (the "Term"), beginning on the System Operational Date of the first Cable to be installed.

2.4 Extension of Term

Grantee shall have the option to extend this Cable Easement for two (2) additional terms of five (5) years each. Grantee shall exercise this option by providing written notice of its election to extend the term at least six (6) months prior to the expiration of the Term (the "Notice of Extension"). Grantee shall not be entitled to extend the Term if it is in default under the terms of this Easement Agreement at the time the option to renew is exercised. If Grantee fails to give timely notice to Grantor of its intention to extend the term which
would be at least six (6) months prior to the expiration of the Term, it shall be at Grantor's sole discretion to agree and authorize the requested extension. The terms and conditions of any extension shall be the same as set forth in this Easement Agreement.

2.5 **Compensation for Cable Easement and Associated Construction Easement for the use of the Public Right of Way**

In exchange for those rights granted under this Easement Agreement in the public right of way for the four Cables, Grantee shall pay to Grantor an aggregate sum of Four Hundred Thousand Dollars ($400,000.00) plus annual payments totaling Four Hundred Thousand Dollars ($400,000). This consideration will be paid according to the following schedule:

1. For the first cable system:
   a. Lump sum consideration in the amount of $100,000 will be paid within 30 days of the System Operational Date (as defined in Section 2.12) of the first cable system, (the "First System Operational Date); and
   b. Annual consideration in the amount of $100,000 will be paid in quarterly installments beginning on the first anniversary of the First System Operational Date and continuing annually for the Term of the Easement.

2. For the second cable system:
   a. Lump sum consideration in the amount of $100,000.00 will be paid within 30 days of the Systems Operational Date of the second cable system, (the "Second System Operational Date); and
   b. Annual consideration in the amount of $100,000.00 will be paid in quarterly installments beginning on the first anniversary of the Second System Operational Date and continuing annually for the Term of the Easement.

3. For the third cable system:
   a. Lump sum consideration in the amount of $100,000.00 will be paid within 30 days of the System Operational Date of the third cable system, (the "Third System Operational Date); and
   b. Annual consideration in the amount of $100,000.00 will be paid in quarterly installments beginning on the first anniversary of the Third System Operational Date and continuing annually for the Term of the Easement.

4. For the fourth cable system:
   a. Lump sum consideration in the amount of $100,000 will be paid within 30 days of the System Operational Date of the fourth cable system, (the "Fourth System Operational Date); and
   b. Annual consideration in the amount of $100,000 will be paid in quarterly installments beginning on the First anniversary of the Fourth System Operational Date and continuing annually for the Term of the Easement.

CPI Adjustment. The annual fees for each cable system set forth in this Section shall be adjusted annually on the anniversary of the System Operational Date of the first Cable, and for the remainder of the Term. The adjustment shall be up or
down in accordance with the change in the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers, Los Angeles/Anaheim/Riverside Average, Subgroup "All Items" (or in accordance with a comparable index if that Consumer Price Index is no longer available) as calculated using the most recent three- year average for the index. Such adjustment shall be capped, without regard to the change in the index, at a maximum of plus or minus ten percent for the interval of adjustment.

2.6 Default and Termination

Any material failure to comply with a material term of this Cable Easement or the conditions of Grover Beach Development Application 20-09 shall be considered a material breach of this Easement Agreement. The party aggrieved by such breach may deliver a Notice of Default to the party in breach specifying such noncompliance and the appropriate cure. If the breach has not been corrected within a period of 120 days after receipt of the Notice of Default, or in the case of breach of an obligation to pay money or to maintain required insurance in full force and effect, within thirty (30) days after receipt of the Notice of Default, then the aggrieved party may terminate this Easement Agreement. Notwithstanding the foregoing, if the breach cannot reasonably be corrected during its applicable cure period, then the aggrieved party may not terminate this Easement Agreement if the breaching party begins to correct such noncompliance during the cure period and diligently pursues corrective measures to completion.

2.7 Non-Exclusivity and Non-Interference

Grantee acknowledges that the Cable Easement is non-exclusive. However, Grantor may not unreasonably interfere with the continued operation, maintenance of the RTI conduit and manholes and will notify RTI of any proposed crossing or parallel installation at least fifteen (15) calendar days (“Notice Period”) prior to any proposed installation unless installation is required due to an emergency. RTI shall notify City within the Notice Period if they object to the Grantors’ intention to place conduit, utility lines or any other structure or line within the subject easement and shall support with plans and specifications to the satisfaction of Grantor the basis for any contention there is an unreasonable interference with Grantees’ conduit. Grantor shall at its sole discretion determine whether there is an unreasonable interference with RTI’s conduit. Grantor shall be authorized to install any parallel or crossing installation if it reasonably determines there is no interference with RTI’s conduit.

2.8 Schedule and Liquidated Damages

Prior to commencement of construction of a Cable, Grantee shall provide to Grantor a schedule for construction of the Cable that is reasonably acceptable to Grantor. The schedule shall provide for ninety (90) calendar days between the Effective Date of each Cable and the date of commencement of construction for the Cable (the “Commencement Date”). Upon presentation of a proposed schedule to Grantor, Grantor shall have fifteen business days to review the schedule. Unless Grantor provides Grantee with written notice that the schedule is not acceptable within that fifteen-business day period, then the schedule shall be deemed accepted.
2.9 Future Landings

Prior to entering into any agreement with a local government to land any other underwater fiber optic cable system wholly owned by Grantee within Ventura, Santa Barbara, San Luis Obispo and Monterey Counties, Grantee shall enter into a thirty (30) day good faith negotiating period with Grantor to attempt to negotiate an agreement with Grantor which would provide that Grantee shall land the fiber optic cable within the City of Grover Beach.

2.10 Effective Date

This Easement Agreement shall not become effective as to each particular Cable unless and until Grantee receives a Coastal Development Permit and any additional approvals and permits required from the California Coastal Commission, California Department of Parks and Recreation and all other United States federal, state and local approvals and permits required to construct and operate the Cable and Grantor and Grantee each accept the conditions imposed upon the permits by those agencies. The date on which this Easement Agreement becomes effective as to each Cable is referred to herein as the "Effective Date" for the Cable. As a point of clarification, the Agreement shall have four separate Effective Dates represented by the receipt by Grantee of the necessary permitting enumerated above for each individual Cable. Therefore, if the necessary permitting for a given Cable is not obtained sufficient to allow construction and installation of the Cable, this Agreement shall not become binding on Grantor or Grantee as to that specific Cable.

Upon obtaining all required United States federal, state and local approvals and permits and acceptance by Grantor and Grantee of the conditions contained in those approvals and permits as to the first Cable, the parties hereto shall record a notice designating the date upon which this Easement Agreement becomes effective as to the first Cable. The same shall apply to each and every other Cable subject to this Agreement.

2.11 System Operational Date

Each Cable will have its own System Operational Date. The "System Operational Date" of each Cable shall be that date at which the Cable is fully installed, the associated system-wide testing is completed, and the Cable is approved to carry commercial traffic. Grantee shall notify Grantor within thirty (30) days after the establishment of the System Operational Date.

2.12 Internal Conflicts

In the event of any conflict between the provisions of Section 2 and Section 4 of this Easement Agreement, the provisions of Section 2 shall prevail.
3.1 Description of Cable Easement Area for the First Cable

The first Cable will be the Bay to Bay Express Cable System. The description of its terrestrial easement areas hereunder are as follows (as also shown in the attached figure "Proposed Terrestrial Facilities."

**Terrestrial Description:**

The construction easement shall include the area defined below and all excavation, installation, pavement cutting, and associated disturbance of the existing finish surface or natural grade within the City Right of Way and any alley, street, roadway or other area within the City’s jurisdiction will be limited to the area described with the exception of additional width as necessary to accommodate the construction and location of the proposed manholes or as approved in writing by the City Engineer. The final easement for continued operation, maintenance, replacement, etc. of the cable installation shall be located within the same defined area as the construction easement except that it will not include the additional 2’ wide area as described below. The final easement will be described by a metes and bounds survey based on the as-built survey to be conducted within the time period described elsewhere in this agreement and will include a scale drawing of the easement for City records.

Construction easement will be located as follows:

**Le Sage Drive:** the easement shall be located within an area defined by the edge of pavement/lip of gutter (located 18” from the face of curb whether a gutter exists or not) of the southerly curb and a line parallel to the edge of pavement/lip of gutter located 2’ approximately north on a line perpendicular to the southerly curb which point describes the north edge of the easement except that an additional 2’ of width in the paved street area will be included within the construction easement to facilitate pavement cutting and installation of the conduits. Additional width will be allowed at manholes to allow the edge of the manhole to be located outside of the gutter where it exists or 18” from the curb face where no gutter exists. Conduits shall be located within and generally centered within the 2’ wide space between the edge of pavement and the line parallel to the edge of pavement and the top of the conduit shall be located no higher than 1’ below the bottom of any gravity sewer or storm drain main currently located, or identified to be located according to the adopted Sewer and Storm Drain Master Plans, within the street where the easement is being offered and either parallel or crossing the alignment of the cables. The additional 2' wide construction easement, location of conduits within final easement and approval of extra width for installation of manholes applies to all remaining segments listed below.

**Front Street:** the easement shall be located within an area defined by a line extending west from and parallel to the edge of pavement/lip of gutter (located 18” from the face of curb whether a gutter exists or not) of the southerly curb on Brighton Avenue and a line extending west parallel to the edge of pavement/lip of gutter located 2’ approximately north on a line perpendicular to the southerly curb on Brighton Avenue which point describes the north edge of the easement.
Brighton Avenue between Front Street and N. 6th Street: the easement shall be located within an area defined by the edge of pavement/lip of gutter (located 18” from the face of curb whether a gutter exists or not) of the southerly curb and a line parallel to the edge of pavement/lip of gutter located 2’ approximately north on a line perpendicular to the southerly curb which point describes the north edge of the easement.

North 6th Street between Brighton Avenue and Trouville Avenue: the easement shall be located within an area defined by the edge of pavement/lip of gutter (located 18” from the face of curb whether a gutter exists or not) of the westerly curb and a line parallel to the edge of pavement/lip of gutter located 2’ approximately east on a line perpendicular to the westerly curb which point describes the east edge of the easement.

Trouville Avenue between North 6th Street and South 7th Street: the easement shall be located within an area defined by the edge of pavement/lip of gutter (located 18” from the face of curb whether a gutter exists or not) of the northerly curb and a line parallel to the edge of pavement/lip of gutter located 2’ approximately south on a line perpendicular to the northerly curb which point describes the south edge of the easement.

South 7th Street between Trouville Avenue and the south side of Farroll Road: the easement shall be located within an area defined by the edge of pavement/lip of gutter (located 18” from the face of curb whether a gutter exists or not) of the westerly curb and a line parallel to the edge of pavement/lip of gutter located 2’ approximately east on a line perpendicular to the westerly curb which point describes the east edge of the easement. The easement shall extend across Farroll Road to the south on lines extended parallel to the easement in South 7th Street and from points located on the edges of the easement described above and in the same width as described above.

Barca Street from Farroll Road to point of Termination approximately 930’ from the southerly right of way of Farroll Road: the easement shall be located within an area defined by the edge of pavement/lip of gutter (located 18” from the face of curb whether a gutter exists or not) of the westerly curb and a line parallel to the edge of pavement/lip of gutter located 2’ approximately east on a line perpendicular to the westerly curb which point describes the east edge of the easement up to a point approximately 70’ from the southerly right of way of Farroll Road and then transition to an area defined by a line parallel to the southerly right of way of Barca Street and located 4’ approximately east on a line perpendicular to the southerly right of way of Barca Street which point describes the west edge of the easement and a line parallel to the southerly right of way of Barca Street and located 6’ approximately east on a line perpendicular to the southerly right of way of Barca Street which point describes the east edge of the easement.

3.2 Description of Cable Easement Area for the Second Cable

The descriptions of the terrestrial areas hereunder for the second Cable are as follows.

The second cable system has not been identified as of the execution of this Easement Agreement. When the second cable system is identified, the legal descriptions will be consistent with the description in Section 3.1 unless in accordance with this Agreement the Cable Easement Area has been relocated.

3.3 Description of Cable Easement Area for the Third Cable
The descriptions of the terrestrial and marine easement areas hereunder for the third Cable are as follows.

The third cable system has not been identified as of the execution of this Easement Agreement. When the third cable system is identified, the legal descriptions will be consistent with the description in Section 3.1 unless in accordance with this Agreement the Cable Easement Area has been relocated.

3.4 **Description of Cable Easement Area for the Fourth Cable**

The descriptions of the terrestrial and marine easement areas hereunder for the fourth Cable are as follows.

The fourth cable system has not been identified as of the execution of this Easement Agreement. When the fourth cable system is identified, the legal descriptions will be consistent with the description in Section 3.1 unless in accordance with this Agreement the Cable Easement Area has been relocated.
4.1 **As Built Drawings**

Within ninety days (90) after the System Operational Date for each of the four Cables, Grantee shall provide Grantor with an "as built" survey and drawings in a form reasonably satisfactory to Grantor, for the purpose of establishing a final Cable Easement Area for each such Cable as provided in Section 2.1.

4.2 **Notification of Maintenance Activities**

Except in cases of emergency, Grantee shall provide Grantor with fifteen (15) days written notice of any significant activities to be undertaken by Grantee in the Cable Easement Area after the Commencement Date of each Cable. In cases of emergency, including, without limitation, a fault in a Cable, Grantee shall notify Grantor of such activity conducted, no later than twenty-four (24) hours after such activity is commenced. "Significant activity" means any maintenance or other activity (other than entry to and exit from the Cable Easement Area) that will be readily noticeable from surrounding property.

4.3 **Permits**

This Easement Agreement shall not become effective as to each Cable unless Grantor issues all permits necessary to construct the Cable, the permits allow construction of the Cable to begin immediately upon issuance of the final permit required to construct the Cable, and no such permit includes conditions that are inconsistent with the rights granted by this Easement Agreement or in addition to the conditions included in this Easement Agreement and Development Application 20-09 except for those standard conditions imposed upon construction activities to protect vehicular and pedestrian safety during construction on public property. Unless mutually agreed upon in writing, this Easement Agreement shall expire thirty months from the date of Grantor's approval and signature of this Agreement if, for whatever reason, Grantee fails to obtain all necessary United States and State of California permits to construct the first Cable.

4.4 **Repair of Damage**

Grantee shall promptly repair, at its sole cost, all damages to any improvements which damages are caused directly by Grantee's activities. All work performed by Grantee shall be completed in a careful and worker like manner to Grantor's reasonable satisfaction, free of any claims or liens. Upon completion of any work performed by Grantee, Grantee shall remove all debris and restore the Cable Easement Area and the Construction Easement Area, as nearly as reasonably possible, to their condition prior to commencement of the Cable construction.

4.5 **Hazardous Substances**

Grantee covenants and agrees that Hazardous Substances will not be used, stored, generated, processed, transported, handled, released, or disposed of in, on, under, or above the Cable Easement Area or the Construction Easement Area, except in accordance with all applicable laws. In the event that during the construction and
installation of a Cable, Hazardous Waste is discovered in the Cable Easement Area or the Construction Easement Area in any amount that would require remediation, and if such Hazardous Waste was not deposited in the subject Easement Area by Grantee, then Grantor shall promptly agree to any reasonable revision to the description of the subject Easement Area requested by Grantee in order to avoid further contact by the Cable or Grantee with such Hazardous Waste.

For the purposes of this Section, Hazardous Substances shall have the meaning given such term in Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq, and applicable California law and the regulations promulgated thereunder. Also for the purposes of this Section, Hazardous Waste shall mean any hazardous, toxic or dangerous waste, substance or material, or contaminant, pollutant or chemical, known or unknown, defined or identified as such in (or for the purposes of) any existing or future local, State or federal law, statute, code, ordinance, rule, regulation, guideline, decree or order relating to human health or the environment or environmental conditions, including but not limited to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.; the Federal Water Pollution Control Act, 49 U.S.C. § 1801 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. App. § 1802 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.

4.6 Removal of Facilities

Following the expiration of the Term or any earlier termination of the Cable Easement pursuant to Section 2.6, Grantor at its sole discretion may require Grantee at its expense to remove the Cables and conduit from the Cable Easement Area and to restore the Cable Easement Area to its prior condition within a reasonable period of time specified by Grantor. Two years prior to the expiration of the Term of the Cable Easement, or any extension thereof, upon the request of Grantor, Grantee shall procure and file with Grantor a surety bond to secure the removal of the Cables and restoration of the Easement Area. The bond shall be issued by a surety authorized to do business in California and acceptable to Grantor and shall be in an amount mutually agreed upon by the parties to reflect the cost of removal of the Cables. In the alternative, Grantor may authorize Grantee to abandon the Cables in place. If Grantor authorizes Grantee to abandon the Cables in place, then Grantee shall cause to be executed, acknowledged, and delivered to Grantor with sixty days (60) of the termination of this Agreement, such instruments as Grantor may require in order to convey ownership of the Cables and conduit to Grantor without payment of compensation or consideration of any kind.

4.7 Indemnities

Grantee shall indemnify, defend, and hold harmless Grantor, its employees, officers, attorney, volunteers, contractors and agents from any and all liability, damages, expenses, causes of action, suits, claims, costs, fees (including attorney’s fees), penalties, or judgments, of any nature whatsoever, brought by or owed to third parties arising out of the operations of Grantee, its contractors, subcontractors, invitees, agents, employees, licensees, or permittees, except as may arise solely out of the willful or sole negligent acts
of Grantor or Grantor's officials, employees, officers, attorneys, volunteers, contractors, and agents.

In the event that Grantor must conduct maintenance, repair or other underground activities in or near a Cable, Grantor will notify Grantee and Grantee shall provide a monitor to guide any activity in a manner that will avoid interference with the Cable.

4.8 Insurance

Grantee shall procure and maintain for the duration of the Cable Easement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with exercise of Grantee's rights under the Cable Easement or the Construction Easement. Insurance shall be of the type, in the amounts and subject to the provisions described below.

1) Commercial general liability coverage at least as broad as Insurance Services Office Commercial General Liability occurrence coverage ("occurrence" form CG0001, Ed. 1/88) with a limit of not less than $2,000,000 per occurrence.

2) Business automobile liability insurance at least as broad as Insurance Services office form CA 0001 (Ed. 12/90) covering Automobile Liability, code 1 "any auto" and endorsement CA 0029 (Ed. 12/88) with a limit not less than $1,000,000 per accident.

3) Workers Compensation Insurance as required by the State of California.

4) Construction Payment and Performance Insurance or bonding in an amount equal to 1,000,000. Coverage, however, may be discontinued after recordation of the Notice of Termination of Construction Easement.

5) Evidence of Coverage:
   a) Prior to commencement of construction of the Cable, Grantee's shall file certificates of insurance with original endorsements evidencing coverage in compliance with this contract and in a form acceptable to Grantor. The certificate shall be on Grantor's standard proof of insurance form.
   b) Grantee shall provide to Grantor, on request, a complete copy, including all endorsements and riders, of any applicable insurance policy.
   c) During the Term, Grantee shall maintain current valid proof of insurance coverage with Grantor at all times. Proof of renewals shall be filed prior to expiration of any required coverage and shall be provided on Grantor's standard proof of insurance form.

6) All insurance coverages shall be provided by insurers with a rating of A-; VII, or better in the most recent edition of Best's Key Rating Guide, Property-Casualty Edition.

7) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided or canceled and shall not be reduced in coverage or limits except after 30 days prior written notice provided to Grantor. Upon prior request of the carrier, the notice period may be reduced to 10 days in the event of non-payment of premium.
8) All liability coverages shall name Grantor, and every elected official, officer, attorneys, agent and employee of Grantor as additional insureds with respect to activities undertaken pursuant to the Cable Easement or the Construction easement.

9) Grantee's insurance and any insurance provided in compliance with these specifications shall be primary with respect to any insurance programs covering Grantor.

10) Where available, the insurer shall agree to waive all rights of subrogation against the Grantor and every officer, agent and employee of Grantor.

11) In the event that Grantee does not provide continuous insurance coverage, Grantor shall have the right, but not the obligation, to obtain the required insurance coverage at Grantee’s cost, and reimbursement of insurance costs shall become a material obligation of the Cable Easement.

As an alternative to all other requirements of this Section 4.8, Grantee may provide self-insurance reasonably satisfactory in kind and amount to Grantor.

Additionally, on or after the fifteenth (15th) anniversary of the Commencement Date, Grantor may increase the minimum amount of the required commercial general liability insurance to four million dollars ($4,000,000) per occurrence.

4.9 Restoration Bond

Prior to commencing any work on public property pursuant to the Cable Easement or the Construction Easement, Grantee shall provide, or shall cause its general contractor to provide, a restoration bond or corporate guaranty to guarantee that, upon any abandonment or other permanent cessation or termination of the work relating to the construction and installation of the Cable, Grantee's public property and public rights-of-way will be restored to the condition existing prior to such construction and installation work, reasonable wear and tear excepted. Any restoration bond must be issued by a surety authorized to conduct business in the State of California and shall remain in full force and effect until recordation of the Notice of Termination of Construction Easement. Grantor shall execute any documents necessary to release any bond or guaranty within thirty days after recordation of the Notice of Termination of Construction Easement. The restoration bond or guaranty will be in the sum of $1,000,000.00. Grantor shall be named as the obligee in any restoration bond.

4.10 Corporate and Possessory Interest Taxes

The granting of the easement subject to this Agreement may create a possessory interest subject to property taxation and that the Grantee understands that entering into this Agreement may create a possessory interest that may be subject to payment of property taxes levied on that interest. Grantee agrees this provision complies with the requirements of notice under California Revenue and Taxation Code Section 107.6 and that Grantee agrees to pay any and all possessory interest taxes levied by any governmental agency that are levied on the interest created by this Agreement and whether levied on the conduit or the cable.

4.11 Cable Companies Guaranty of Obligations under this Agreement
It is understood by the Grantor and Grantee that Grantee does not own any proprietary interest in the subject Cables that are being installed within the Conduit consistent with this Agreement. That each of the Cables are owned by separate legal entities or individuals and that Grantee is entering into a separate agreement with each cable company entitled “Indeefeasible Non-Exclusive Right of Use For Outside Plant” (“IRU Agreement”) or a similar agreement used to allow access by the Cable owners to the subject conduit. This Agreement entitles Grantee to construct and install a Conduit within City rights-of-way wherein Grantee is authorized to utilize the Conduit for the placement of up to four fiber optic cables. Grantee is intending to enter into the IRU Agreement for the purpose of allowing individually third-party owned Cables to use the easement rights of Grantee under this Agreement. Grantee agrees that in the event of an assignment of RTI Infrastructure, Inc. pursuant to provision 4.13 of this Agreement, RTI Infrastructure agrees it will only assign their interest if the IRU Agreement is assigned to the same Assignee and the guarantee, obligations and duties of the Company in the IRU Agreement remains unchanged as to the City of Grover Beach. Grantee agrees that the following language shall be included within any IRU Agreement or other agreement used for access of the subject cables to the Cable Easement Area:

This Guarantee Provision is agreed to by Company as an inducement to RTI-I to enter into this Indeefeasible Non-Exclusive Right of Use For Outside Plant and the obligation of RTI-I to include this provision in this Agreement is an Inducement for the City of Grover Beach to enter into the Fiber Optic Cable Agreement dated ___________, 2020 with RTI Infrastructure, Inc. Company unconditionally and irrevocably guarantees to the City of Grover Beach the full and prompt payment and compliance with all obligations of RTI Infrastructure, Inc., or any assignee of RTI Infrastructure, Inc. to the City of Grover Beach as and when the same become due and payable under the Fiber Optic Cable Easement and Associate Construction Easement, dated ____________, between City of Grover Beach and RTI Infrastructure, Inc. as it applies to this specific cable. If at any time RTI-I, or any assignee, defaults in the payment of any obligation, term, covenant or condition in the subject City of Grover Beach easement agreement with RTI Infrastructure, Inc. (RTI-I), including, without limitation, the easement payments from RTI Infrastructure, Inc. to the City of Grover Beach, then Company, upon demand by the City of Grover Beach, shall pay the same in the place of RTI-I, or its assignee.

Company hereby waives notice of any and all defaults under the Fiber Optic Cable Agreement between the City of Grover Beach and RTI Infrastructure, Inc. caused by RTI Infrastructure Inc. Company agrees that in the event of a default by RTI Infrastructure, Inc., or its assignee, under the terms of the Fiber Optic Cable Agreement, City of Grover Beach may commence any action or proceeding against Company or exercise any available remedy at law or in equity to enforce this Guaranty without first commencing any action or proceeding against RTI Infrastructure, Inc., or its assignee, or otherwise exhausting any or all of it available remedies against RTI Infrastructure, Inc. or its assignee, it being expressly agreed by Company that Company’s liability under this Guarantee shall be primary. Further, any assignment of RTI Infrastructure, Inc.’s. obligations under the Fiber Optic Cable Agreement shall also constitute an assignment of the obligations of this provision and shall not relieve, amend, modify or release Company of their obligations under this provision.
4.12 Notices

Notices, consents, requests and other communications required or permitted by this Easement Agreement shall be in writing and shall be deemed duly given by one party and received by the other party when: (a) personally delivered; or (b) sent by United States mail, postage prepared, certified mail, return receipt requested, and actually received by, or rejected by, the party to whom it is addressed. The notice shall be addressed to the applicable party at the respective address set forth above in the Summary of Basic Provisions with a copy to:

RTI, Infrastructure, Inc.
288 Bush Street, #77
San Francisco, CA 94104
Attn: ________________, Chief Executive Officer

City of Grover Beach
154 S. 8th Street
Grover Beach, CA 93433
Attn: City Manager

Any party may change its address by notifying the other party in accordance with the procedure set forth above.

4.13 Assignment by Grantee

Upon written notice submitted to Grantor not less than thirty (30) days prior to each transfer or assignment, the rights and obligations of Grantee pursuant to this Easement Agreement may be transferred or assigned by Grantee to a third party (the "Assignee"), in whole or in part, from time to time during the Term. Any such transfer or assignment shall be subject to the provisions of this Section and the controls and limitations contained herein.

Concurrently with the submission of the notice of impending transfer or assignment by Grantee, Grantee shall submit to Grantor: (a) a written notification by Grantee, identifying the particular rights hereunder being assigned (the "Assigned Rights"), including the portion of the Cable Easement Area and Construction Easement Area being assigned thereby, as well as the identity of the Assignee and the particular Cable as to which the Assigned Rights are being assigned; (b) a fully executed instrument, in a form and content reasonably acceptable to Grantor, pursuant to which the Assignee expressly assumes and agrees for the benefit of the Grantor to perform the obligations of Grantee associated with the Assigned Rights, and (c) an acknowledgment, in form and content reasonably acceptable to Grantor and executed by the Assignee, pursuant to which the Assignee acknowledges that the Assignee has read and understands this Agreement and all of the provisions hereof. Grantor agrees to preapprove any form of proposed instruments submitted by Grantee provided that the form is reasonably acceptable to Grantor.

In addition to the notice referred to above, Grantee shall submit written notice to Grantor upon the consummation of any such partial or full transfer or assignment and shall include in such notice a fully executed copy (showing all recordation information for any recordable documents) of the instrument(s) by which the transfer or assignment was effected.
If Grantee transfers or assigns, in whole or in part, its interest in this Easement Agreement and complies with the provisions of this Section, Grantee shall be released from its obligations under this Easement Agreement associated with the Assigned Rights, provided that Grantor reasonably determines that Grantee's Assignee is reasonably capable of fulfilling the financial obligations of this Easement Agreement associated with the Assigned Rights. In order to make such determination, Grantor may require Grantee to provide Grantor with audited financial statements of the Assignee prepared in accordance with Generally Accepted Accounting Principles. Grantor shall provide notice to Grantee of its determination regarding the financial capability of the Assignee within sixty (60) days after receiving such financial statements. If Grantor fails to provide such notice within that sixty (60) day period, then Grantee shall provide Grantor with a final request for release. Grantor shall then provide Grantee with notice of its determination within fifteen (15) days of receiving such final request. If Grantor fails to provide such notice within such fifteen (15) day period, then the Assignee shall be deemed accepted by Grantor and Grantee shall be released from its obligations under this Easement Agreement associated with the Assigned Rights.

Grantor shall accept any Assignee as reasonably capable of fulfilling the financial obligations of this Easement Agreement if the Assignee's financial capabilities equal or exceed those of Grantee. Furthermore, Grantor shall not reject an Assignee as not reasonably capable of fulfilling the financial obligations of this Easement Agreement associated with the Assigned Rights for the sole reason that the Assignee's financial capabilities are not equally as strong as those of Grantor. The parties anticipate that potential Assignees may be reasonably capable of fulfilling the obligations of this Easement Agreement associated with the Assigned Rights even though they do not possess the financial strength of Grantee.

4.14 Limitation of Liability

In no event shall Grantor be liable to Grantee for lost profits, special damages, incidental damages, indirect damages, consequential damages or any other damages of any kind whatsoever beyond direct damages, which direct damages would include the cost of remedial repairs.

In no event shall Grantee be liable to Grantor for special damages, incidental damages, indirect damages, consequential damages or any other damages of any kind whatsoever beyond direct damages, which direct damages, would include the cost of remedial repairs.

4.15 Governing Law

This Easement Agreement shall be interpreted under and governed by the laws of the State of California.

4.16 Integration Clause

This Easement Agreement sets forth the entire agreement of the parties with respect to the Cable Easement, the Construction Easement and other matters described herein. All other prior negotiations, representations, warranties and discussions of the parties in respect thereof are superseded by the provisions of this Easement Agreement, except that the parties recognize that the mitigation measures from the Environmental Impact Report prepared for the Project which have been incorporated into Development
Application 20-09 are also conditions of the exercise of rights under this Easement Agreement.

4.17 Modification

This Easement Agreement may be amended or modified only by a written instrument executed and acknowledged by the parties or their successors-in-interest and recorded in the Official Records of San Luis Obispo County, California.

4.18 Compliance with Laws

Grantee shall at its own expense, conform to all applicable laws, regulations, permits, orders, or requirements of any public authority concerning the Cables. Upon request, Grantee shall supply Grantor with copies of all United States federal, state and local permits or orders for the Cables within 5 business days of the request.

4.19 Waiver

No term, covenant, or condition of this document and no default or breach of any such term, covenant or condition shall be deemed to have been waived by either party's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged in writing.

Furthermore, no such waiver shall be deemed to be a waiver of any other term, covenant or condition or any other default or breach of any term, covenant or condition of this document.

4.20 Time

Time is of the essence for each and all of the terms, covenants and conditions in which time of performance is a factor.

4.21 Severability

If any term, covenant or condition of the Cable Easement or the Construction Easement is determined by a court of competent jurisdiction to be invalid, it shall be considered deleted and shall not invalidate any of the remaining terms, covenants and conditions.

4.22 Counterparts

This Easement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

4.23 Authority

The persons signing below warrant that they have authority to bind the party on whose behalf they are executing this Easement Agreement.
4.24 Attorney Fees

In any litigation between the parties concerning the terms of, or rising from, this agreement, including any claim of indemnity arising from this agreement, the prevailing party shall be entitled to recover its costs of suit and reasonable attorney fees.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the date hereafter affixed.

GRANTOR:
CITY OF GROVER BEACH

BY: ________________________
DATE: ______________________

GRANTEE:
RTI Infrastructure, Inc.

BY: ________________________
DATE: ______________________
TO:            Honorable Chair & Planning Commission     DATE: June 24, 2020
FROM:       Bruce Buckingham, Community Development Director
PREPARED BY:     Bruce Buckingham, Community Development Director
SUBJECT:       Development Application 20-09 - Request for a Use Permit and Coastal Development Permit to install an underground conduit system for up to four fiber optic cables and related infrastructure within Pismo State Beach Parking lot, Le Sage Drive, Brighton Avenue, North 6th Street, Trouville Avenue, South 7th Street, and Barca Street. (Applicant: RTI Infrastructure, Inc.)

RECOMMENDATION

Staff recommends that the Planning Commission adopt a resolution certifying the sections of the Mitigated Negative Declaration that are applicable to the City and approving Development Application 20-09.

BACKGROUND

RTI Infrastructure, Inc. is proposing the installation of up to four fiber optic cables carrying telecommunication data to connect the United States with Singapore, Guam, Hong Kong, and Australia (reference Attachment 3). The project-related work would be in both terrestrial (land) and marine (ocean) areas on and offshore of Grover Beach; therefore, there are multiple permitting agencies necessary to entitle the project including the California State Lands Commission (CSLC), California Coastal Commission and the City of Grover Beach. The CSLC has taken the role as the lead agency as defined in the California Environmental Quality Act (CEQA) and has prepared a Mitigated Negative Declaration (MND) for the project. The CSLC is scheduled to certify the MND and approve its portion of the project on June 23, 2020. If the CSLC does not certify the MND, this item will be continued to a future date until such time the MND is certified.

The City’s jurisdiction for this project covers the terrestrial portion of the project beginning where the four fiber optic cables exit the cable landing site located in the Pismo State Beach parking lot near Fin’s Restaurant and ending at the existing building located at 948 Huber Street. The project construction consists of installing one conduit underground that would contain four separate fiber optic cables primarily within City streets. If the project is approved by the Planning Commission, the final approval would be contingent upon City Council approval of a non-exclusive easement agreement which would provide the terms for the use of the City’s rights-of-way and an exclusive construction agreement that would allow for the construction and installation in the City’s rights-of-way.

DISCUSSION

The proposed project terrestrial components within the City’s jurisdiction consists of installing approximately 8,000 linear feet of underground conduit, manholes at periodic locations, and could
include a grounding bed. The project begins where the four fiber optic cables exit the cable landing site in the Pismo State Beach parking lot with conduit going east in LeSage Drive, under Highway 1 and the Union Pacific Railroad (UPRR), continuing east on Brighton Avenue, turning south on North 6th Street, turning west on Trouville Avenue, turning south on South 7th Street, crossing Farroll Road and terminating at the Pacific Crossing building located at 948 Huber Street (reference Attachment 3). Once the conduit and related infrastructure is installed as part of phase 1, fiber optic cables would be pulled through the conduit in up to four separate phases. The following key project components are within the City’s jurisdiction.

Ocean Ground Bed. An ocean grounding bed would be installed either onshore or offshore for each subsea fiber optic cable to ground the cable. If installed onshore it would be located beneath the existing Pismo State Beach parking lot and would be included in the City’s CDP. The grounding beds are needed for cathodic protection to control corrosion and to provide a ground for the electricity travelling through it that would power the marine cable amplifiers.

Underground Conduit System. An underground conduit system approximately 8,000 linear feet beginning at the point the conduits exit the cable landing site in the Pismo State Beach parking lot and terminating within the cable landing station (reference Attachment 2, Exhibit A). This underground conduit system would consist of one casing approximately 10 inches in diameter that would contain four fiber optic cables buried at least 4 feet deep with periodic manholes on one side of the streets. The conduit would be installed using horizontal directional drilling for the entire conduit system.

Cable Landing Station. The conduit system would terminate at the existing cable landing station building for Pacific Crossing at 948 Huber Street and additional equipment would be installed within the building to allow the four new fiber cables to be hooked up to the existing telecommunications and power equipment. From here, the telecommunications traffic would be connected into the broader telecommunications network with onward connectivity to major metropolitan areas such as Los Angeles and the Bay Area.

A more detailed project description can be viewed in Section 2.0 of the MND in addition to those portions of the project that are not within the City’s jurisdiction.

General Plan & Development Code Consistency
The proposed project begins at the cable land site in Pismo State Beach and terminates at a cable landing station on Huber Street. The project is primarily located within City streets but short sections of the conduit are located in the Coastal Visitor Services Zone (Pismo State Beach and LeSage Avenue), Coastal Industrial Commercial Zone (Forde property located adjacent to the UPRR) and the Industrial zone (cable landing station). The zoning for all three zones allows telecommunication facilities subject to approval of a Use Permit and Coastal Development Permit for those areas located in the Coastal Zone. City rights-of-way do not have a zoning designation and there use by a private entity to install and maintain conduit is subject to Council approval. If the Planning Commission approves the project, the Council would consider approval of a non-exclusive Easement Agreement for use of the rights-of-way along with an exclusive construction easement.

Local Coastal Program Consistency
The project is located in the Coastal Zone, which requires approval of a Coastal Development Permit and must be found consistent with the City’s Local Coastal Program (LCP). The project area located in the Coastal Zone is limited to the potential grounding bed and 2400 linear feet of conduit beginning at the cable landing site and terminating at the intersection of Brighton Avenue and North 4th Street. The project is within Visual Resource Areas 1 and 3 which address policies
related to visual impacts but because all project related infrastructure is located beneath the ground, there would no impacts to visual resources except for temporary impacts associated with the construction and staging of equipment. The project would also be boring under Meadow Creek and work would occur in or adjacent to riparian areas; however, the MND contains several biological mitigation measures to ensure all impacts would be less than significant. Therefore, staff is of the opinion that the project is consistent with the relevant LCP policies. Based on a portion of the project located west of Highway 1, the project is appealable to the California Coastal Commission.

Environmental Review

A Mitigated Negative Declaration (MND) has been prepared for this project in compliance with the California Environmental Quality Act by the California State Lands Commission (CSLC) as the lead agency as part of a larger project. The City, as a Responsible Agency will consider adopting the MND for the sections of the project that are within the jurisdiction of the City (reference Attachment 1, Exhibit A). The MND identified several potential significant impacts for the terrestrial portion of the project related to air quality, biological resources, cultural resources, greenhouse gas emissions, hazardous materials, hydrology and water quality, and noise, but all impacts can be mitigated to less than significant with implementation of the mitigation measures. The City would be responsible for implementing the mitigation measures identified in Attachment 1.

As the lead agency, the CSLC must certifying the Mitigated Negative Declaration prior to the City as a Responsible Agency considering certification of the sections that are applicable to the sections of the project in the City’s jurisdiction. The CSLC is scheduled to consider certification of the MND and approval of its portion of the project at its meeting on June 23, 2020. If the CSLC does not certify the MND, staff will request the item be continue as the Planning Commission cannot act on the project until such time CSLC as the lead agency certifies the MND.

ALTERNATIVES

The Planning Commission has the following alternatives to consider:

1. Adopt a resolution certifying sections of the MND that are applicable to the City and approving Development Application 20-09; or
2. Provide alternative direction to staff.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act. On June 11, 2020, the public hearing notice was published in New Times, and mailed to property owners within 300 feet of the subject property and to occupants within 100 feet of the subject property located in the Coastal Zone.

ATTACHMENTS

1. Draft Resolution Certifying the MND
2. Draft Resolution for the Use Permit & Coastal Development Permit
3. Project Overview Map
4. Project Location Map
PLANNING COMMISSION RESOLUTION NO. 20-12

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GROVER BEACH
CERTIFYING SECTIONS OF A MITIGATED NEGATIVE DECLARATION
APPLICABLE TO DEVELOPMENT APPLICATION 20-09 PREPARED BY CALIFORNIA
STATE LANDS COMMISSION
(APPLICANT: RTI INFRASTRUCTURE, INC.)

WHEREAS, an application has been received from RTI Infrastructure, Inc. for Development Application 20-09 for a Use Permit and Coastal Development Permit to install four fiber optic cables carrying telecommunication data to connect the United States with Singapore, Hong Kong, Guam and Australia; and

WHEREAS, the City has jurisdiction of a portion of the project beginning at the cable landing site located in the parking lot of Pismo State Beach and terminating at the cable landing station located at 948 Huber Street; and

WHEREAS, there are multiple permitting agencies necessary to entitle the project including the California State Lands Commission (CSLC), California Coastal Commission and the City of Grover Beach; and

WHEREAS, CSLC has taken the role as the lead agency as defined in the California Environmental Quality Act (CEQA) and has prepared a Mitigated Negative Declaration (MND) for the project which was certified by CSLC on June 23, 2020; and

WHEREAS, a duly noticed public hearing was held by the Grover Beach Planning Commission on June 24, 2020 to consider certifying the sections of the Mitigated Negative Declaration applicable to Development Application 20-09; and

NOW, THEREFORE, BE IT RESOLVED, the Planning Commission of the City of Grover Beach, hereby certifies sections of the Mitigated Negative Declaration applicable to Development Application 20-09 based on the following Findings:

SECTION 1. Findings to Certify Mitigated Negative Declaration, Attached as Exhibit A. The Planning Commission in its independent analysis finds as follows:

1. The Proposed Mitigated Negative Declaration has been completed in compliance with CEQA.

   Fact. The California State Lands Commission has prepared and certified a Mitigated Negative Declaration consistent with the CEQA Guidelines and mitigation measures have been agreed to by the applicant that would mitigate potential significant environmental effects to less than significant. The Planning Commission is certifying the sections of the Mitigated Negative Declaration applicable to Development Application 20-09

2. The Mitigated Negative Declaration was presented to the Planning Commission, and the information contained therein was considered by the Planning Commission, prior to taking action on the project for which it was prepared.
Fact. A staff report was prepared for the proposed project which included the Mitigated Negative Declaration prepared by the CSLC for consideration by the Planning Commissioner.

3. The project does not have the potential to degrade the environment when mitigation measures are incorporated into the project.

Fact. The proposed project contains mitigation measures that will reduce potential environmental impacts to less than significant. The mitigation measures the City will be responsible for implementing are as follows: AQ-1, AQ-2, AQ-3, BIO-1, BIO-2, BIO-3, BIO-4, BIO-5, BIO-6, BIO-7, CUL-1/TCR-1, CUL-2/TCR-2, CUL-6/TCR-3, GHG-1, HAZ-1, NOI-1, NOI-2,

4. The project will not achieve short-term to the disadvantage of long-term environmental goals.

Fact. The proposed project is consistent with the City’s General Plan and Development Code.

5. The project does not have impacts which are individually limited, but cumulatively considerable.

Fact. The Mitigated Negative Declaration determined that the proposed project will not produce any potential impacts that are cumulatively considerable.

6. The project will not cause substantial adverse effects on human beings either directly or indirectly.

Fact. The proposed project will not cause substantial adverse effects on human beings, either directly or indirectly as analyzed in the MND.

SECTION 2. Mitigation Summary. The Planning Commission of the City of Grover Beach, consistent with Public Resources Code § 21081.6, hereby adopts the sections of the mitigation monitoring program applicable to Development Application 20-09 as indicated above that will reduce potentially significant impacts to less than significant levels.

On motion by Commissioner Holden, seconded by Commissioner Halverson, and on the following roll-call vote, to wit:

AYES: Commissioners Halverson, Holden, McLaughlin, and Vice Chair Rodman.
NOES: None.
ABSENT: Chair Blum.
ABSTAIN: None.
the foregoing RESOLUTION NO. 20-12 was PASSED, APPROVED, and ADOPTED at a Regular Meeting of the City of Grover Beach Planning Commission on this 24th day of June 2020.

_______________________________
RON RODMAN, VICE CHAIR

Attest:

______________________________________________________________
NICOLE RETANA, SECRETARY TO THE PLANNING COMMISSION
PLANNING COMMISSION RESOLUTION NO. 20-13

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GROVER BEACH
APPROVING DEVELOPMENT APPLICATION 20-09 FOR A USE PERMIT
AND COASTAL DEVELOPMENT PERMIT

WHEREAS, an application has been received from RTI Infrastructure, Inc. for Development Application 20-09 for a Use Permit and Coastal Development Permit to install four fiber optic cables carrying telecommunication data to connect the United States with Singapore, Hong Kong, Guam and Australia; and

WHEREAS, the City has jurisdiction of a portion of the project beginning at the cable landing site located in the parking lot of Pismo State Beach and terminating at the cable landing station located at 948 Huber Street; and

WHEREAS, there are multiple permitting agencies necessary to entitle the project including the California State Lands Commission (CSLC), California Coastal Commission and the City of Grover Beach; and

WHEREAS, CSLC has taken the role as the lead agency as defined in the California Environmental Quality Act (CEQA) and has prepared a Mitigated Negative Declaration (MND) for the project which was certified by CSLC on June 23, 2020; and

WHEREAS, the notice of Public Hearing was sent to adjoining property owners and occupants and advertised in the manner required by law; and

WHEREAS, the Planning Commission of the City of Grover Beach in its independent analysis certified the sections of the Mitigate Negative Declaration applicable to Development Application 20-09 at its meeting on June 24, 2020.

WHEREAS, the Planning Commission of the City of Grover Beach has reviewed and considered the request to approve Development Application 20-09 at a Regular Meeting on June 24, 2020.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Grover Beach HEREBY make the following findings and determinations with respect to Development Application 20-09:

SECTION 1. Findings for approval of Coastal Development Permit. The Planning Commission finds as follows in accordance with Grover Beach Municipal Code (GBMC) Article IX, Section 6.20.040(H):

1. The proposed development as modified by any conditions of approval, is in conformity with the City’s certified Local Coastal Program and will not adversely affect coastal resources.

   Fact. The proposed project is consistent with the City’s certified Local Coastal Program and will not adversely affect coastal resources.

2. If the project is located between the first public road and the sea, that the project is in conformity with the public access and recreation policies of Chapter 3 of the
Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

**Fact.** A portion of the proposed project is located between the first public road and the sea. The project installation of conduit and fiber optic lines are completely below ground and will not affect public access and recreation.

3. Feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment;

**Fact.** The Planning Commission has independently analyzed and certified a Mitigated Negative Declaration which includes mitigation measures that will reduce all potentially significant environmental impacts to less than significant.

4. The proposed use is consistent with the purposes of the zone in which the site is located;

**Fact.** The proposed telecommunications project to install fiber optic cables is consistent with the purpose of the Coastal Visitor Serving Zone, Coastal Industrial Commercial, and use of public rights-of-way.

5. The proposed development is in conformance with the City’s General Plan.

**Fact.** The development is consistent with all applicable General Plan policies as discussed in the staff report.

6. The proposed location of the use and conditions under which it may be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity; and

**Fact.** The project/use consists of underground fiber optic cables and related structures which are consistent with all applicable General Plan policies and Development Code requirements and based on the project design will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.

7. Public services are adequate to serve the proposed development.

**Fact.** The project/use consists of underground fiber optic cables and related structures privately operated and maintained and no public services are necessary to serve the project.

**SECTION 3. Findings for approval of Use Permit.** The Planning Commission finds as follows in accordance with Grover Beach Municipal Code (GBMC) Article IX, Section 6.20.090(F):

1. The proposed project is consistent with the General Plan, the Development Code, and other City goals, policies, and standards, as applicable.
Fact. The proposed project is consistent with all applicable General Plan policies and Development Code requirements for the Coastal Visitor Serving Zone, Coastal Industrial Commercial Zone, Industrial Zone, and public rights-of-way as discussed in the staff report.

2. The subject site is physically suitable in terms of design, operating characteristics, shape, size, and topography.

Fact. The fiber cable route is physically suitable for underground fiber optic cables and related structures because they are located primarily within public rights-of-way and existing and proposed public and private paved areas.

3. The type and intensity of use being proposed will not constitute a hazard to the public health, safety, or welfare.

Fact. The project/use consists of underground fiber optic cables and related structures which are consistent with all applicable General Plan policies and Development Code requirements. As conditioned, the use will not constitute a hazard to the public health, safety, or welfare. The project has been conditioned to comply with all applicable California Building Codes.

SECTION 4. Approval. The Planning Commission of the City of Grover Beach, at a Regular Meeting on June 24, 2020, resolved to approve Development Application 20-09 subject to the following:

CONDITIONS OF APPROVAL:

GENERAL

G-1. The approval for a Use Permit and Coastal Development Permit granted by this Resolution shall be valid for 24 months from the date of approval and shall expire unless an Encroachment Permit is issued, and construction commences. A request for a time extension may be submitted to the Community Development Department as provided in Grover Beach Municipal Code Article IX, Section 6.30.060.

G-2. The Applicant agrees, as a condition of approval of this resolution, to indemnify, defend and hold harmless, at Applicant’s expense, City and City’s agents, officers and employees from and against any loss, liability, costs, damages, claims, action or proceeding of any kind including also any proceeding commenced to attack, review, set aside, void or annul the approval of this resolution or to determine the reasonableness, legality or validity of any condition attached hereto. City shall promptly notify Applicant of any such loss, liability, costs, damages, claims, action or proceeding to which City receives notice, and City will cooperate fully with Applicant in the defense thereof. Applicant shall reimburse the City for any court costs and attorney’s fees that the City may be required to pay as a result of any such claim, action or proceeding. City may, in its sole discretion, participate in the defense of any such claim, action or proceeding, but such participation shall not relieve Applicant of the obligations of this condition. Applicant’s acceptance of this resolution or commencement of construction or operations under this resolution shall be deemed to be acceptance of all conditions contained in this resolution.
G-3. All Conditions of Approval shall be provided on a full-size drawing sheet as part of the construction plan set. All notes and specifications as shown on the plans shall be considered Conditions of Approval. If there is a conflict between the approved plans and the Conditions of Approval, the Conditions of Approval shall prevail. The project shall comply with all State and City codes, regulations, and standards. Construction plans shall comply with applicable California Building Codes in effect at the time of submittal.

COMMUNITY DEVELOPMENT DEPARTMENT

CDD-1. This approval authorizes the installation of four fiber optic cables and related structures as shown in Exhibit A. This approval is contingent upon the Grover Beach City Council entering into a non-exclusive easement agreement and an exclusive construction easement with RTI Infrastructure, Inc. The Community Development Director may approve modifications to the fiber optic route if it is determined there are no environmental impacts identified that create an increase in the severity of the impacts identified in the Mitigated Negative Declaration that are applicable to Development Application 20-09.

CDD-2. The applicant shall adhere to all mitigation measures and the mitigation monitoring plan contained in the Mitigated Negative Declaration that are applicable to Development Application 20-09. The applicant shall be responsible for hiring an environmental monitor(s) that shall report to the Community Development Department to ensure all mitigation measures are adhered to and the mitigation monitoring program is successfully implemented.

CDD-3. Prior to issuance of a non-exclusive easement permit, if a staging area will be used within the City, the applicant shall obtain the required permits prior to storing equipment or materials.

CDD-4. Prior to issuance of a non-exclusive easement permit, the applicant shall provide written verification from all property owners and agencies that permission has been granted for those sections of the project not within City rights-of-way.

PUBLIC WORKS DEPARTMENT/CITY ENGINEER

PW/CE-1. Prior to issuance of a non-exclusive easement permit, the applicant shall submit Public Improvement Plans that comply with Municipal Code Article IX Section 5.20 and City requirements regarding form and content. The Plans shall address location, depth, and crossings over/under existing underground utilities with proposed private fiber optic cables, construction staging, and traffic control subject to approval by the City Engineer.

PW/CE-2 Prior to issuance of a non-exclusive easement permit, the applicant shall obtain a Construction General Permit from the Regional Water Quality Control Board.

PW/CE-3 Prior to issuance of a non-exclusive easement permit, the applicant shall coordinate with all utility companies and Pacific Crossing to ensure no utility conflicts occur.

PW/CE-4 The applicant shall comply with the requirements of the City Council approved non-exclusive easement agreement and exclusive construction agreement at all times.
On motion by Commissioner Holden, seconded by Commissioner Halverson, and on the following roll-call vote, to wit:

AYES: Commissioners Halverson, Holden, McLaughlin, and Vice Chair Rodman.
NOES: None.
ABSENT: Chair Blum.
ABSTAIN: None.

the foregoing RESOLUTION NO. 20-13 was PASSED, APPROVED, and ADOPTED at a Regular Meeting of the City of Grover Beach Planning Commission on this 24th day of June 2020.

_______________________________
RON RODMAN, VICE CHAIR

Attest:

_______________________________
NICOLE RETANA, SECRETARY TO THE PLANNING COMMISSION
Exhibit A

Project Location Within Grover Beach