STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROBERT PERRAULT, CITY MANAGER
SUBJECT: FURTHER CONSIDERATION OF A CONSTRUCTION MANAGEMENT AGREEMENT AND A CONDUIT LEASE AGREEMENT WITH DIGITAL WEST NETWORKS, INC.

BACKGROUND

The City has initiated a partnership with Digital West to implement the Municipal Broadband Network ("Network" or "Municipal Network"). Once completed, the Network will bring broadband service to key commercial and industrial areas of the City. The County of San Luis Obispo has also indicated a commitment to work with the City to serve County offices located on Longbranch Avenue and South 16th Street. The total cost of the project is estimated at $927,000. The City will be responsible for funding the conduit system for the Network at a cost of $500,000.

The partnership will require the execution of three agreements between the City and Digital West. The three agreements include: Engineering and Design Agreement, a Construction Management Agreement, and a Conduit Lease Agreement. The City Council has authorized the Engineering and Design Agreement. This agreement is being circulated for signature and staff has conducted an initial meeting with Digital West staff regarding engineering and design. During discussion of the proposed Conduit Lease Agreement, the Council expressed a concern regarding the application of the Annual Recurring Charge ("ARC") of 5.1% to revenues generated by the Municipal Network. Staff has had additional discussions with Digital West regarding the ARC and is transmitting the results to the Council and requests direction regarding finalization of the Conduit Lease Agreement.

DISCUSSION

According to the Lease Agreement, the City will own the installed conduit system. The City will lease conduit sufficient to operate the Network to Digital West. In return, Digital West will install the broadband fiber for the Network and will make available the fiber sufficient to serve the City’s needs at no additional cost to the City. Digital West will also market, manage, and maintain the entire Network capable of serving the individual customer. In addition to the services provided, the Lease Agreement requires Digital West, as the Lessee, to pay a lease rate of 5.1% of Lessee’s total gross revenue per year. Section 2.1(a)(1) of the Conduit Lease Agreement defines gross revenues as “all consideration of any kind or nature, including cash,
credits, property, and in-kind contributions (services or goods) received by the Lessee from the provision of any services performed by Lessee within the City’s jurisdictional boundaries."

Digital West will use the Grover Beach Network to facilitate a connection with Pacific Crossing, the trans-Pacific fiber cable located in Grover Beach. Connection to the trans-Pacific fiber cable will enable businesses to have access to Asian markets. The Council requested a clarification as to the application of the ARC to revenues generated from businesses located outside of the City and using the Network's infrastructure to connect to Pacific Crossing.

As a follow up to the Council's request, staff has met on two occasions with Mr. Tim Williams, Founder/CEO for Digital West. During these discussions, Mr. Williams indicated the ARC was never intended to apply to services generated outside of the City. The ARC was intended to apply to only revenues generated within the City's jurisdiction and was to be used to assist the City in repaying its initial investment. According to Digital West, this project as a partnership will create an economic development project that will benefit businesses in Grover Beach and the City itself. The City's contribution ($500,000) and the partnership between Digital West and the City will assist in keeping broadband pricing for business customers significantly lower than would traditionally be available. Digital West estimates the pricing would be $100.00 for 100 megabits per second (Mbps) and $150 for 1,000 Mbps. As a comparison, costs for similar services in San Luis Obispo would expect to run between $250 and $500 a month, respectively.

As the Council will recall in the FY 15 Budget, the Council has already designated the equivalent of the Pacific Crossing Franchise Fee Revenue ($45,000) to repay the original investment. Digital West has compiled an estimate of Network customers and gross revenues for the first 10 years of operation as noted below to assist the City in calculating revenues it would receive from the ARC:

<table>
<thead>
<tr>
<th></th>
<th>Year 1</th>
<th>Year 5</th>
<th>Year 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Customers</td>
<td>90</td>
<td>52</td>
<td>12</td>
</tr>
<tr>
<td>Total Customers</td>
<td>90</td>
<td>469</td>
<td>529</td>
</tr>
<tr>
<td>Monthly Recurring Revenue</td>
<td>$14,000</td>
<td>$538,200</td>
<td>$628,200</td>
</tr>
<tr>
<td>ARC revenues</td>
<td>$700</td>
<td>$27,448</td>
<td>$32,038</td>
</tr>
</tbody>
</table>

Based on revenue estimates by Digital West, the ARC will be very small in the initial years, but does have the prospect of growing to slightly more than $27,000 in year 5 and slightly more than $32,000 in year 10.

There have been no new clarifications sought or new information provided relative to the Construction Management Agreement. Based on the information provided relative to the clarification of the ARC, staff is requesting direction from Council to finalize the agreements.

**ALTERNATIVES**

The Council has the following alternatives to consider:

1. The Council could choose to provide direction to staff to finalize the agreements with Digital West;
2. The Council could choose to take no further action at this time; or
3. The Council could provide staff with additional direction.
RECOMMENDED ACTION

It is recommended that the City Council provide direction relative to the finalization of agreements with Digital West.

FISCAL IMPACT

There is no fiscal impact associated with providing direction regarding finalization of the agreements. Once the Conduit Lease Agreement is finalized, it will provide a methodology for the reimbursement of City costs for implementing the Grover Beach Broadband Network.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

Attachment

1. Staff report and attachments, dated October 6, 2014
STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: ROBERT PERRAULT, CITY MANAGER

SUBJECT: CONSIDERATION OF A SERIES OF AGREEMENTS REGARDING THE DEVELOPMENT AND IMPLEMENTATION AND FINANCING OF A BROADBAND NETWORK (VIRTUAL PORT) FOR THE CITY OF GROVER BEACH

BACKGROUND

The City has consistently over a number of years worked to implement a system that would improve technology access for existing and future business. As a cornerstone of Economic Development, the implementation of a technology network was incorporated in the Council-approved Economic Development Strategy in 2008. In February 2010, the Grover Beach City Council, serving as the former Improvement Agency Board, adopted the Technology Master Plan. As envisioned in the Technology Master Plan, a fiber optic network would be deployed throughout Grover Beach. As a result, the City would become a telecommunications hub in California. Taking advantage of the trans-Pacific fiber cable owned by Pacific Crossing, businesses enjoying the use of the network would have access to both high speed Internet as well as, if needed, direct connection to the Asian market.

In January 2010, working with Digital West as a consultant, the City developed and the Council adopted the Implementation Plan for the Grover Beach Municipal Network. The Implementation Plan recognized that a phased approach should be taken to the installation of the network. The first phase should be the development of a focused fiber optic network servicing the industrial and commercial areas of the City where the potential market is the densest. Subsequent phases would extend the network based on the success of the first phase and demand. In adopting the Implementation Plan, the Council committed the City to developing the infrastructure capable of serving a rapidly growing sector of the business economy and eventually the entire community.

In 2012, the City Council took another step towards implementation with the endorsement of a public-private relationship with Digital West as a full partner focused on making the broadband network (also identified as a Virtual Port) a reality. In addition to the partnership with Digital West, the County of San Luis Obispo has also come onboard as a contributing partner. With the addition of the County, the network delivery system will be expanded to include County-owned facilities located on South 16th Street in Grover Beach.

Please Review for the Possibility of a Potential Conflict of Interest:

☐ None Identified by Staff  ☐ Bright
☐ Peterson  ☐ Marshall
☐ Lee  ☐ Nicolls

APPROVED FOR FORWARDING

ROBERT PERRAULT
CITY MANAGER

Meeting Date: October 6, 2014

Agenda Item No. 13
Since 2012, staff has been working with Digital West and the County to identify the key roles and relationships of each of the parties involved in the partnership. As the Council is aware, implementation of the broadband network has continued to be a top priority objective as identified in the City's Annual Work Plan.

As a result of this work effort, staff is recommending that the Council adopt a Resolution authorizing the City to enter into an Engineering Agreement, Construction Management Agreement, and Lease Agreement with Digital West; provide direction to staff to affirmatively respond to the County's Letter of Intent; and to complete the financing for the project.

DISCUSSION

Umbrella Partnership with Digital West

Digital West is a premier Internet service provider in the County. Founded by Chief Executive Officer Tim Williams, the firm provides a number of Internet-related services locally, regionally, nationally, and internationally. With a staff of 25, Digital West manages a local 30-mile network and provides fiber connectivity, colocation, connectivity, and cloud services to wide variety of businesses. Digital West was instrumental in assisting the City with development of the Technology Master Plan and the Implementation Plan and, consequently, has the unique skills and talents that will assist the City in carrying out its objective of implementing a fiber optic system. This partnership will assist the City in getting broadband fiber to key first phase locations in a timely manner, providing a regional connection that will assist in leveraging access to the trans-Pacific cable, and providing the operation of a broadband system that is self-sustaining.

As recommended by staff, Digital West will be responsible for completing the design and engineering of the first phase of the network. Once Digital West has completed the design, including the development of the biddable specifications, the City will conduct a public bid and award process to secure a contractor to complete the installation of conduit and necessary infrastructure. During the construction, Digital West will provide construction management services on behalf of the City. All of the conduits and related infrastructure will become assets of the City once installed. At the completion of construction, the City will enter into a lease agreement with Digital West for the conduit sufficient to operate the network system. As compensation for the lease, Digital West will install the fiber at its cost, provide City access to the fiber for public purposes, and will pay the City 5.1% of its gross revenue for its operation of the private portion of the system. Digital West will manage the network at no cost to the City and will partner with the City on marketing of the network. In order to implement this umbrella partnership, three agreements between the City and Digital West will need to be completed as follows: (Once the Engineering and Design and Construction Management Agreements are executed, the project should be operational in approximately nine months.)

• Engineering and Design – Consultant Services Agreement (Please see Attachment 2)

Digital West will be responsible for engineering and designing the network that will place conduit /fiber throughout Phase I (as noted in Exhibit A of the Engineering and Design Agreement). The design will recognize the use of existing conduit already installed either by the City or private parties and will provide for the installation of additional multiple conduits (3-5 depending on location). The design will also identify aerial locations where necessary. Once installed, the network will provide businesses 1 "gig" of capacity and a "point of presence" with Pacific
Crossing that would facilitate the use of the trans-Pacific cable if a business warranted the connection. As a part of the Engineering contract deliverables will include biddable specifications, construction cost estimate, and performance schedule. During the bid process Digital West will assist the City in the review of bids received and will assist the City in answering questions before and after the bid process.

- **Construction Management – Consultant Services Agreement** *(Please see Attachment 3)*

Digital West will provide construction management services for the project, once the contractor is identified. In concert with the City, Digital West will review the work, provide quality control, coordinate scheduling, and review contractor requests for payment, change orders, and completion of punch list items.

- **Conduit Lease Agreement** *(Please see Attachment 4)*

Once the City has completed the bid process, awarded a public works contract for construction and installation of the conduit, and the contractor has initiated installation of the conduit, the City will execute a Conduit Lease Agreement with Digital West. The lease agreement will lease to Digital West the conduit and related infrastructure necessary to manage and operate the network. According to the agreement, Digital West will install fiber in conduits and overhead in accordance with the plan. Digital West will own and manage the fiber system installed within the leased conduit and transfer to the City proprietary ownership of the fiber to use for City purposes, including leasing or transfer of a portion to the County. Digital West shall be responsible for all maintenance of the fiber installed, including the City's fiber. Digital West, with the approval of the City, will develop and implement a marketing program that will focus on serving the City’s existing businesses and appeal to businesses located in the greater technology market. The City will receive 5.1% of all gross revenue from the operation of the network within Grover Beach. The term of the Lease Agreement is 10 years with an option to renegotiate for an additional 10 years. Termination provisions are included in the agreement that protect both the City and Digital West.

**San Luis Obispo County - Letter of Intent** *(Please see Attachment 5)*

Staff has been working with the County for several months to accommodate the County’s interest in bringing broadband from its present location in the vicinity of South 4th Street and Rockaway Avenue to serve its buildings located on South 16th Street. This extension of service is a part of the County’s overall plan to bring broadband connectivity to all of the County’s facilities. It is cost effective for the County to participate as a part of the municipal network installation project. In order to serve the County, the network would be installed along Rockaway Avenue eastward to South 11th Street, and then to Longbranch Avenue and then easterly to the County’s facilities on South 16th Street.

This route would be beneficial to the City in that the line would run along Rockaway Avenue adjacent to City Hall, the Police Department, and the Fire Station. The route would also open up additional City neighborhoods to potential broadband service. In the Board of Supervisors’ approved Letter of Intent, the County is indicating its willingness to participate up to a proportional share of the project cost amounting to $268,000. The Letter of Intent commits an initial reimbursement of the County's share of engineering and contract management costs with a Comprehensive Cost Sharing Agreement to follow as the project moves to construction.
The total cost for the project is estimated at $927,000. This amount is apportioned to the participating parties in the following manner:

City of Grover Beach - $500,000
County of San Luis Obispo - $268,000
Digital West - $159,000

$927,000 Estimated Total Project Cost

As noted, the City’s contribution would be capped at $500,000. In the FY 15 General Fund Budget, the City has identified $44,000 as a debt service payment for a loan between the City’s Wastewater Enterprise and the General Fund to finance the network. The cash balance in the Wastewater fund is sufficient to provide the loan. Repayment would occur with an estimated interest rate of 2.5%. This return is significantly higher than the cash balance is currently earning on deposit with the Local Agency Investment Fund (LAIF). As an alternative, staff has initiated discussions with the California Infrastructure Bank, whose representatives have indicated an interest in participating in similar financing. Consequently, staff is recommending that the Council direct staff to complete the discussions with the California Infrastructure Bank and return with the appropriate financing mechanism.

**ALTERNATIVES**

The City Council has the following alternatives to consider:

1. The Council could authorize the City to enter into the Engineering and Design Agreement, Construction Management Agreement, and the Conduit Lease Agreement with Digital West; and direct staff to respond affirmatively to the Letter of Intent from the County; and return to the Council with an acceptable financing mechanism.

2. Delay taking action at this time until additional information is provided; or

3. The Council could provide staff with additional direction.

**RECOMMENDED ACTION**

It is recommended that the City Council:

1. Adopt the Resolution authorizing the City to enter into an Engineering and Design Agreement, Construction Management Agreement, and Conduit Lease Agreement with Digital West; provide direction to staff to respond affirmatively to the Letter of Intent from the County and return to the Council with an acceptable financing mechanism, and

2. Delegate to staff the authority to negotiate, revise or amend the agreements and the authority to do whatever is necessary to finalize the attached agreements, provided the amendments are substantially consistent with the business points enumerated and represented by these contracts.
FISCAL IMPACT

The identified financing of this project is a loan between the City's Wastewater Enterprise and the General Fund in the amount of $500,000. The source of repayment is $44,000 identified in the General Fund, which is equivalent to the franchise fee revenue source received from Pacific Crossing.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act. Copies of this staff report and the meeting agenda were sent to Digital West and the County of San Luis Obispo (the County Administrative Office and Information Technology Department).

Attachments

1. Draft Resolution
2. Draft Engineering and Design Agreement
3. Draft Construction Management Agreement
4. Conduit Lease Agreement
5. Letter of Intent from San Luis Obispo County
AGREEMENT
CITY OF GROVER BEACH, CALIFORNIA
CONSULTANT SERVICES
ENGINEERING AND DESIGN

THIS AGREEMENT is made and entered into effective the ____ day of _____, 2014, by and between the CITY OF GROVER BEACH, a California municipal corporation (hereinafter referred to as "CITY"), and Digital West Networks, Inc., a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional engineering services for the design of plans and general construction contract documents for the construction and installation of conduit for Information Technology (IT) within the CITY's right-of-way, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing technical services as an IT infrastructure ultra-high speed fiber optic internet and carrier transport service consultant and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, this Agreement sets forth the terms and conditions under which CONSULTANT shall provide professional services, to be paid by the City of Grover Beach; and

WHEREAS, this Agreement will be administered for CITY by the Department of Public Works Department Director/City Engineer (hereinafter referred to as "Director") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. CONSULTANT shall perform the services described herein and in Exhibit A to complete the Project more fully described in Exhibit A, and this shall include all work incidental to, or necessary to perform, such services even though not specifically described in Exhibit A. The services of CONSULTANT shall consist of five Parts as described below. A separate Notice to Proceed will be issued for each of the aforementioned Parts. By entry into this Agreement and upon CITY'S issuance of a written "Notice to Proceed," CITY contracts for the services in Part One. CONSULTANT shall not perform any other Part of the Agreement, and this Agreement shall not be a contract for any other Part, until further performance is authorized by CITY'S issuance of a written "Notice to Proceed." It shall, however, remain CONSULTANT'S offer to perform all remaining Parts described herein. In the event CONSULTANT performs services without CITY'S prior written authorization, CONSULTANT will not be entitled to compensation for such services.
(a) Part One. Schematic Design Phase.

(1) CONSULTANT shall review the description of the Project set forth in Exhibit A and consult with designated representatives of CITY to ascertain the requirements of the Project.

(2) CONSULTANT shall conduct studies and investigations as necessary to confirm requirements of design including, but not limited to, (i) consulting with the various utility agencies, and (ii) obtaining all information and data from the respective responsible CITY department/division that is available in CITY'S records and is required by CONSULTANT in connection with the consulting services including, but not limited to, maps, surveys, reports, information, restrictions and easements. CONSULTANT shall notify CITY if a topographic survey is required.

(3) CONSULTANT shall provide a preliminary evaluation of the Project taking into consideration CITY'S estimate of the cost of construction and all design, engineering and construction management cost ("Construction Budget") of an amount not to exceed $500,000.00, including alternative approaches to design and construction of the Project.

(4) Based upon the mutually agreed upon Project requirements and any adjustments authorized by CITY in the Construction Budget, CONSULTANT shall design and prepare schematic design drawings and other documents for review, modification, if required, and acceptance by CITY staff sufficient to show the concept and scope of the proposed Project and the scale and relationship of Project components.

(5) CONSULTANT shall submit a preliminary estimate of construction cost for review and acceptance by CITY. As used herein, "construction cost" means the cost of construction under the general construction contract and does not include CONSULTANT'S compensation as herein provided. Such estimate shall include, and shall separately state, the cost of any add or deduct alternatives, and the cost of any work which may be let on a segregated bid basis which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget.

(6) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(7) CONSULTANT may not rely upon any as-builts provided by CITY, but shall investigate the existing conditions and ascertain the adequacy of such as-builts for CONSULTANT'S design. CONSULTANT shall bring to CITY'S attention any discrepancies in the as-builts that are discovered by CONSULTANT. CITY makes no representations regarding any as-builts.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within
90 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 calendar days from receipt of CITY’S comments unless an extension of time is approved in writing by the Director.

(b) Part Two. Design Development Phase. After review and acceptance of the schematic design phase and issuance of a written Notice to Proceed with this Part Two:

(1) Based upon the accepted schematic design documents and the Construction Budget, including authorized revisions thereto, CONSULTANT shall prepare for review and acceptance by CITY the design development documents consisting of drawings and other documents to fix and describe the size and character of the Project as necessary to show treatment of significant details. In addition, CONSULTANT shall provide outline specifications of the work as to kinds of materials, systems, and other such design elements as may be required. Such design development documents and specifications shall be subject to review and acceptance by CITY.

(2) CONSULTANT shall submit a revised estimate of construction cost for review and acceptance by CITY. The revised estimate shall include, but shall separately state, the cost of any add or deduct alternates, and any work which may be let on a segregated bid basis which may be incorporated in or excluded from the general construction contract as may be necessary to stay within the Construction Budget, including authorized revisions thereto.

(3) In the event that the revised estimate of construction cost exceeds the preliminary estimate of construction cost previously accepted, excluding therefrom any add alternate and any work which may be let on a segregated bid basis which was identified in Part One as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the revised estimate and CONSULTANT shall, at no additional cost to CITY, make such design changes as may be necessary to reduce the revised estimate so that it shall not exceed the preliminary estimate of construction cost previously accepted by CITY. CITY shall not increase the scope of the Project except by modification of this Agreement which shall include an agreed upon increase in CONSULTANT’S compensation.

(4) CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

(5) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 90 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 calendar days from receipt of CITY’S comments unless an extension of time is approved in writing by the Director.
Part Three. Construction Document Phase. After review and acceptance of the design development phase and issuance of a written Notice to Proceed with this Part Three:

1. CONSULTANT shall prepare from the accepted design development documents, detailed plans and specifications setting forth the complete work to be done, and the materials, workmanship and site work required. CONSULTANT with assistance from the City shall also prepare necessary bidding information, general and special conditions of the general construction contract, technical specifications of the general construction contract, and the bid proposal and general construction contract forms. Such documents shall be subject to the review and acceptance by CITY. CONSULTANT shall cooperate with, assist and be responsive to CITY'S in preparation of all documents. CITY'S Standard Specifications, if any, must be used by CONSULTANT where possible. Final drawings shall be drawn and delivered in PDF format. Bid, general conditions, contract and bond document forms or formats regularly used by CITY shall be used by CONSULTANT unless the Director determines they would be impractical for this Project. CONSULTANT shall be responsible for assuring that the special conditions, technical specifications and any other documents prepared by CONSULTANT are consistent with any documents regularly used by CITY that are used for this Project.

2. Upon request of CITY, CONSULTANT shall provide the calculations used to determine the general construction contract quantities; and structural calculations for the purpose of obtaining any building permits.

3. CONSULTANT shall make as many submittals as may be necessary or desirable to obtain the acceptance by CITY and shall assist CITY in applying for and obtaining from applicable public agencies any approval, permit, report, statement, or waiver required by law, which assistance shall include, but not be limited to, making Project information available to CITY.

4. CONSULTANT shall provide CITY with three sets of completed plans and three sets of completed specifications for review and final acceptance by CITY. Should the plans and specifications as submitted by CONSULTANT not be accepted by CITY, CONSULTANT shall revise the plans and specifications as needed to obtain final acceptance at no additional cost to CITY.

5. After acceptance of final corrections, if any, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of drawings and complete disk files of specifications and bid documents for the Project.

6. CONSULTANT shall submit a final estimate of construction cost for review and acceptance by CITY. Such estimate shall be calculated as of the date all general construction contract documents are delivered to CITY in final form ready for reproduction and advertising. Such estimate shall include, but shall separately state, the cost of any add or deduct alternates and any work which may be let on a segregated basis which may be incorporated in or excluded from the general construction contract.

7. In the event that the final estimate of construction cost exceeds the revised estimate of construction cost previously accepted, excluding therefrom any
add alternate and any work which may be let on a segregated bid basis which was identified in the final revised estimate in Part Two as that which may be excluded from the general construction contract, CITY shall have the option of accepting or rejecting the final estimate. If CITY elects to reject the final estimate, CONSULTANT shall at no additional cost to CITY, make such design changes as may be necessary to reduce the final estimate so that it shall not exceed the revised estimate of construction cost previously accepted by CITY.

(8) Services shall be undertaken and completed in a sequence assuring expeditious completion. All services shall be rendered and deliverables submitted within 90 calendar days from the issuance of a Notice to Proceed for this Part unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 calendar days from receipt of CITY’S comments unless an extension of time is approved in writing by the Director.

d) Part Four. Bidding Phase. After review and acceptance of the construction document phase and if CITY elects to proceed to bid, which shall constitute a written Notice to Proceed with this Part Four:

(1) CONSULTANT shall assist CITY in obtaining bids. CONSULTANT shall not communicate with potential bidders regarding this Project without the express prior written authorization of CITY’S Director.

(2) CONSULTANT shall, within 7 calendar days of any request by CITY, expeditiously draft and promptly provide addendum as determined by CITY to be reasonable or necessary for the bidding process.

(3) If the lowest responsible bid received for the general construction contract exceeds by 10% or more the final estimate of construction cost previously accepted by CITY, excluding therefrom any add alternate and any work which may be let on a segregated bid basis which are excluded from the general construction contract, CONSULTANT shall, within 90 calendar days of any request by CITY, revise the plans and specifications as may be necessary to stay within 10% of such final estimate of construction cost, at no additional cost to CITY provided such bid is received within 180 calendar days after completion of services in Section 1(c) of this Agreement. CONSULTANT shall also submit such revised plans and specifications, together with a new final estimate of construction cost, to CITY for review and acceptance. This procedure, using the latest accepted final estimate of construction cost, shall, upon written notice to CONSULTANT from the Director, be repeated until an acceptable bid is received that does not exceed the accepted final estimate of construction cost by more than 10%.

e) Part Five. Construction Phase and General Construction Contract Administration. The construction phase will begin with the award of the general construction contract, which shall constitute a written Notice to Proceed with this Part Five, and will terminate when a Notice of Completion is filed. Upon award of a general construction contract for the Project and under the direction of the Director:

(1) CONSULTANT shall attend the pre-construction conference and, if called upon by CITY, act on CITY’S behalf in discussing the various aspects of the construction phase.
(2) CONSULTANT shall review and recommend in writing to CITY acceptance or non-acceptance of shop drawings, equipment and material submittals of the general construction contractor as required by the general construction contract and applicable laws and regulations in a timely manner. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor.

(3) CONSULTANT shall, at intervals appropriate to the state of construction, familiarize itself with the progress and quality of the work and determine in general if the work is proceeding in accordance with the general construction contract documents, and keep CITY informed of the progress of the work. In the event that CONSULTANT'S visit to the site results in the discovery of any defect or deficiencies in the work of the general construction contractor, CONSULTANT shall immediately advise CITY and document, in writing, the work CONSULTANT deems substandard, and make recommendations where appropriate to reject any work not conforming to the intended design or specifications. Based on CONSULTANT'S best knowledge, information and belief, CONSULTANT shall provide CITY a general written assurance that the work covered by a payment application meets the standards in the general construction contract. As to technical aspects, 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.

(4) Upon written request by CITY, CONSULTANT shall render interpretations of the general construction contract documents necessary for the proper execution or progress of the work.

(5) Upon written request by CITY, CONSULTANT shall render written recommendations on change orders, claims, disputes or other questions arising out of the general construction contract, in a timely manner. Recommendations by CONSULTANT in favor of a change order that is consequently accepted by CITY shall constitute approval by CONSULTANT who shall then approve the change order in writing. CONSULTANT shall not unreasonably withhold written approval in the event CITY accepts a change order that CONSULTANT recommended to be rejected. In the event of any technical disputes, CONSULTANT shall provide CITY with CONSULTANT'S written interpretation of the contract documents. The period for CONSULTANT review shall be as specified in the general construction contract, except if such period is not so specified, the period shall be as determined in the pre-construction conference as mutually agreed upon by CITY, CONSULTANT and the general construction contractor. If CITY, CONSULTANT and the respective general construction contractor are unable to mutually agree on such period for CONSULTANT review, then CITY will make the determination and that determination will be final.

(6) Upon written request by CITY, CONSULTANT shall provide such design and specification services as may be requested by CITY to implement change orders necessary for clarification or interpretation of the general construction contract documents or which may have resulted from errors or omissions by CONSULTANT.

(7) Where change orders arise as a result of an increase in the scope of work or are due to unforeseeable conditions, the parties may modify this Agreement, which modification shall include an agreed upon increase in CONSULTANT'S compensation.
(8) Upon written request of CITY, CONSULTANT shall assist CITY in the preparation of Progress Payment Estimates and other related construction reports.

(9) CONSULTANT shall provide CITY with original plans for the Project submitted for final approval by the Director.

(10) CONSULTANT shall prepare Record Drawings by updating the accepted general construction documents in Part Three to reflect all changes or deviations that occurred during construction as reflected on or from each of the following: (i) the general construction contractor provided red-lined plans, (ii) those furnished by the CITY, (iii) CONSULTANT provided Request for Information responses, and (iv) any CONSULTANT bulletins, amendments or clarifications. CONSULTANT shall provide CITY with one set of vellum Record Drawings for the Project within 90 calendar days from receipt of red-lined field markups unless an extension of time is approved in writing by the Director. Re-submittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within 14 calendar days from receipt of CITY comments unless an extension of time is approved in writing by the Director. In addition, CONSULTANT shall provide CITY with one complete set of CAD/System disk files of Record Drawings in the following format: Both CAD and PDF.

2. CITY’S responsibilities. CITY will:

(a) Conduct onsite inspection during construction to check quality and quantity of work as conditions warrant and be responsible for assuring that the general construction contractor carries out all construction work in accordance with the plans and specifications. However, this does not release CONSULTANT from its responsibility to make periodic site visits under Section 1(e) for the purpose of observing the work to determine its general conformity with the plans and specifications and reporting its findings to CITY.

(b) Prepare all change orders during construction in cooperation with CONSULTANT.

(c) Prepare all Progress Payment Estimates in cooperation with CONSULTANT following its general assurance that the work covered by a payment application meets the standards in the general construction contract documents based upon CONSULTANT’S best knowledge, information and belief.

(d) Pay, or cause to be paid, plan check fees, conditional use permit fees and site plan review fees.

(e) Arrange for and pay, or cause to be paid, any fees associated with Environmental Impact Reports or Statements.

(f) Give reasonably prompt consideration to all matters submitted by CONSULTANT for acceptance to the end that there will be no substantial delays in CONSULTANT’S program of work. For an acceptance, approval, authorization, a request or any direction to CONSULTANT to be binding upon CITY under the terms of this Agreement, such acceptance, approval, authorization, request or direction must be in writing, duly authorized by CITY and signed on behalf of CITY by the Director.

CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of $85,689.00. Such fee includes all expenses incurred by CONSULTANT in performance of the services except for those allowable costs eligible for reimbursement as set forth in subdivision (e) of this Section 3.

Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business. Such statements shall be for an amount no greater than that attributable to the Part upon which CONSULTANT is then engaged as provided in Section 3(c) below.

For purposes of determining the division of the total compensation to CONSULTANT as provided in Section 3(a) above, or should performance of any succeeding Part not be authorized by CITY as provided in Section 1 of this Agreement, it is agreed that the total compensation shall be allocated to the five Parts of CONSULTANT'S performance as follows: Part 1 - 20%, Part 2 - 20%, Part 3 - 20%, Part 4 - 20%, and Part 5 - 20%. Prior to the award of a general construction contract for the Project, or should such contract not be awarded, the approved Parts as provided above shall be utilized for purposes of determining the fee due to CONSULTANT.

The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. Subsequent to the date of completion of Part Three, changes due to Code revisions or enactments adopted after such date shall constitute additional work subject to this Section 3(d).

At any time or times before final payment, the City may have CONSULTANT'S invoices or vouchers and statements of cost audited. Any payment may be reduced by amounts found by City not to constitute allowable costs and/or adjusted for prior overpayments or underpayments. Upon CONSULTANT'S compliance with all terms of this Agreement, City shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

Termination, Remedies, Force Majeure, and Consolidation of Disputes.

This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY's non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services
satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY's damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon the request of the Director or his/her designee, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify the Director or his/her designee in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Director or his/her designee of the cessation of such occurrence.

(g) CONSULTANT agrees that, notwithstanding any contrary provision in this Agreement, any dispute arising from or relating to this Agreement (including, without limitation, disputes based on contract, tort, equity or statute) may, at CITY's option, be joined and consolidated with any other dispute or disputes arising from or relating to the Project so that all disputes arising from or relating to the Project may be resolved in a single proceeding. CONSULTANT hereby specifically waives any objection it may otherwise have to such joinder and consolidation and specifically consents to mediation, arbitration or any other dispute resolution mechanism, forum or proceeding necessary to effectuate the joinder and consolidation contemplated by this provision.

5. Confidential Information, Ownership of Documents and Copyright License.
(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of CITY. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information developed pursuant to this Agreement, disclosed or submitted, orally, in writing, or by any other medium or media, (otherwise referred to as "Work"). All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) CONSULTANT shall not reproduce (such as photographs and prints), duplicate, distribute reproductions, or incorporate into any trademark or service mark, the Work without the prior written consent of CITY. Any rights of the CONSULTANT in the Work terminate upon the death of such CONSULTANT and do not extend to such CONSULTANT'S heirs, successors or assigns.

(c) Title to the Work shall pass to CITY upon final acceptance by CITY. CITY reserves the right to donate, transfer or sell the Work or any portion thereof. CITY shall have the exclusive right to publicly display the Work and shall have a license to reproduce (such as photographs and prints) or create three-dimensional reproductions of the Work for any noncommercial purpose (including, but not limited to, books, slides, postcards, film, Internet sites, reproductions for advertising, and other media). Prior to public display, the CITY shall consider the sensitive nature and potential security risk of releasing the information to the general public. Such reproductions shall contain if legally necessary a copyright notice. Reproductions for commercial purposes are only to be made with the mutual written consent of CONSULTANT and CITY. All references and reproductions or adaptations of the Work will credit the Work to the CONSULTANT unless CONSULTANT requests to the contrary. CITY reserves the right to modify, remove and/or relocate the Work at any time, and after consultation with CONSULTANT, shall have the right to determine when and if modifications, repairs and/or restorations are needed. If City makes modifications, repairs or restoration not approved by the CONSULTANT, the CONSULTANT shall have the right to sever its association with the Work. CONSULTANT agrees to give CITY written notice prior to asserting any claim pertaining to the Work, and CITY shall have not less than 90 days from the date of receipt of claim to cure any such claim. CITY may incorporate the Work into any trademark or service mark to be utilized by City to register the same in accordance with Federal, state or local law.

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 5. This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such
services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in Exhibit B, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Administrative Services Director, Gayla R. Chapman or her successor, or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.
Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY’S execution of this Agreement, CONSULTANT shall complete a City of Grover Beach conflict of interest disclosure statement in the form as set forth in Exhibit C. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT’S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in
accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 10(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). CONSULTANT and any subcontractors shall agree to obtain any local licensing or certifications necessary to perform services within the City, including but not limited to City Business Tax Certificates. If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

(d) CONSULTANT'S services pursuant to this Agreement shall be provided under the supervision of Mr. Tim Williams, and he/she shall not assign another to supervise CONSULTANT'S performance of this Agreement without the prior written approval of the Director.

11. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:
(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, gender identification, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, gender identification, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT’S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 11.

12. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY’S
express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

13. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

14. Binding. Subject to Section 15 below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

15. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the Grover Beach City Council. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved by the Grover Beach City Council.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

16. Compliance with Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.
17. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

18. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be San Luis Obispo County, California.

19. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

20. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

21. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

22. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

23. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

24. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

25. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

26. **No Third Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
27. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement and any documents issued that resulted in selection of CONSULTANT for entry into this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.
CITY GROVER BEACH,
a California municipal corporation

By: ____________________________
Bob Perrault,
City Manager

Digital West Networks, Inc.,
a California Corporation

By: ____________________________
Name: Tim Williams
Title: CEO
(if corporation or LLC, Board Chair, Pres. or Vice Pres.)

Attachments:
1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Disclosure of Conflict of Interest
EXHIBIT A
SCOPE OF SERVICES
Consultant Service Agreement between CITY
And CONSULTANT
ENGINEERING AND DESIGN

1. The following is a Scope of Engineering and Construction Services for the placement of conduit. This services are defined for the purpose of completing a new Fiber Optic Network in the City of Grover Beach, CA.

   • Perform all necessary field work to verify readiness for fiber optic cable placement;
   • Design and draft Fiber Optic Network using ArcGIS (ArcFM)/AutoCAD;
   • Submit fiber optic cable construction drawings to Grover Beach Public Works;
   • Submit fiber optic cable construction drawings to third parties involved (Caltrans, etc.);
   • Design and produce field copy splice sheets for fiber optic splice;
   • Prepare construction drawings in AutoCAD or ArcGIS format for Bid/Construction;
   • Prepare a fiber optic cable Bill of Materials with construction drawing and splice documentation takeoff;
   • Prepare Bid Package for submittal to Contractors;
   • Coordinate with City to distribute bid packages;
   • Participate in pre-construction meeting with prime contractor(s) to discuss safety, construction procedures, inspections, details, etc.
   • Conduct final inspection of conduit prior to installation of all fiber optic cables;
   • Perform final fiber optic cable route inspection with prime contractor for sign off by the CITY.
   • Perform final cost and close out of construction project.

2. The following represent engineering and construction services in addition to the above general scope of services and are specific to projects reflected in the drawings reflected in pages 1 and 2 of this Exhibit A.

   • **Section 1a** of Drawing 1 of 2 of Exhibit A is a new underground trench and conduit placement from the north side of Atlantic City Ave. to the South side of Newport Ave. along the west side of Front Street. Portion: 819 feet of three separate 1.25" conduit (new) for a total 2,457 linear feet of conduit.

   • **Section 1b** of Drawing 1 of 2 of Exhibit A makes use of an existing 4 inch conduit from the south side of Newport Ave. to the north side of Ramona Ave. along the west side of Front Street. The design will include three separate (new) 1.25" inner-duct conduit being placed in the existing 4" conduit. The design consists of 1,078 linear feet of new conduit placed into a 4 inch existing conduit for a total of 3,234 linear feet of 1, 25" conduit.

   • **Section 2** of Drawing 1 of 2 of Exhibit A is a proposed bore/trench from the northwest corner of Front Street and Ramona Street along the south side of Ramona Ave. to the west side of 4th Street. From that point the new bore/trench continues south along the west side of 4th Street to Rockaway Ave. Engineering services shall include all design for construction and installation of this underground portion: 1,690 feet of five separate 1.25" conduits (new) for a total 8,450' linear feet of conduit.
• **Section 4** of Drawing 1 of 2 and Drawing 2 of 2, of Exhibit A, is a proposed underground trench and conduit placement from the northwest corner of Rockaway Ave. and S. 4th St., to the northwest corner of S. 4th St. and Farroll Rd along the west side of S. 4th St. Engineering services shall include all design for construction and installation of this underground portion: 2,190' feet of five separate 1.25" conduit (new) for a total 10,950 linear feet of conduit.

• **Section 5.1** of Drawing 1 of 2, of Exhibit A, is a new underground trench and conduit placement from the northwest corner of Rockaway Ave. and S. 4th St., to the northwest corner of S. 16th St. and Longbranch Ave., along the north side of Rockaway Ave and the north side of Longbranch Ave. Engineering services shall include all design for construction and installation of this underground portion: 4,820' feet of five separate 1.25" conduit (new) for a total 24,100 linear feet of conduit.

• **Section 5.2** of Drawing 1 of 2, of Exhibit A, is a new trench/bore and conduit placement from the northeast corner of Rockaway Ave. along the west side of S. 7th St. to a riser pole location. Underground: 175' - 3 - 1.25" Conduits (new) for a total 525' linear feet of conduit.

• **Section 5.4** of Drawing 1 of 2, of Exhibit A, is a proposed trench/bore and conduit placement from the northwest corner of S. 11th St. and Rockaway Ave. along the west side of S. 11th St. to the southwest corner of Grand Ave. and S. 11th St. Engineering services shall include all design for construction and installation of this underground portion: 330' feet of five separate 1.25" conduit (new) for a total 1,650 linear feet of conduit.

• **Section 5.5** of Drawing 1 of 2, of Exhibit A, is a proposed trench/bore and conduit placement from the northwest corner of S. 13th St. and Longbranch Ave. along the west side of S. 13th St. to the southwest corner of Grand Ave. and S. 13th St. Engineering services shall include all design for construction and installation of this underground portion: 696' feet of five separate 1.25" conduit (new) for a total 3,480 linear feet of conduit.

• **Section 5.6** of Drawing 1 of 2, of Exhibit A, is a proposed trench/bore and conduit placement from the northwest corner of S. 16th St. and Longbranch Ave. along the west side of S. 16th St. to the southwest corner of Grand Ave. and S. 16th St. Engineering services shall include all design for construction and installation of this underground portion: 680' feet of five separate 1.25" conduit (new) for a total 3,400 linear feet of conduit.

• **Section 6.1** of Drawing 2 of 2, of Exhibit A, is a proposed trench/bore and conduit placement on the west side of Huber St., from a point approximately 560' south of Farroll Rd. south to 948 Huber St. (Pacific Crossing Building). Engineering services shall include all design for construction and installation of this underground portion: 380' feet of three separate 1.25" conduit (new) for a total 1,140 linear feet of conduit.
• **Section 6m** of Drawing 2 of 2, of Exhibit A, is a proposed trench/bore and conduit placement from northeast corner of Griffin St. and Farroll Rd. along the east side of Griffin St., approximately, 430' south of Farroll Rd. Engineering services shall include all design for construction and installation of this underground portion: 430' feet of three separate 1.25” conduit (new) for a total 1,290 linear feet of conduit.

• **Section 6n (Optional)** of Drawing 2 of 2, of Exhibit A, is a proposed trench/bore and conduit placement from a point on the east side of Griffin St. approximately, 430' south of Farroll Rd. along the east side of Griffin St. to an existing riser pole on the southeast corner of Griffin St. and Highland Way. Engineering services shall include all design for construction and installation of this underground portion: 1,211' feet of three separate 1.25” conduit (new) for a total 3,633 linear feet of conduit.

• **Section 6o** of Drawing 2 of 2, of Exhibit A, is a proposed trench/bore and conduit placement from the southeast corner of Farroll Rd. and Huston St, along the east side of Huston St. to an existing riser pole on the southeast corner of Huston St. and Highland Way. Engineering services shall include all design for construction and installation of this underground portion: 1,412' feet of three separate 1.25” conduit (new) for a total 4,236 linear feet of conduit.
Exhibit B

INSURANCE REQUIREMENTS
Consultant Service Agreement between CITY
and CONSULTANT
ENGINEERING AND DESIGN

A. CONSULTANT shall obtain and maintain during the performance of any services under this Agreement the following insurance coverage issued by a company satisfactory to the City's Administrative Services Director, Gayla R. Chapman, 805-473-4550, unless waived, in writing, the requirement that CONSULTANT obtain and maintain such insurance coverage.

1) Commercial general liability insurance including a contractual liability endorsement in an amount not less than $1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability, including a non-owned automobile endorsement;

2) Errors and omissions insurance to a minimum coverage of $500,000, with neither CONSULTANT nor listed sub-consultants having less than $500,000 individually;

3) Workers' compensation insurance in compliance with the laws of the State of California, including employer's liability insurance in an amount not less than $1,000,000 per claimant.

4) An umbrella policy in an amount not less than $5,000,000 affording excess coverage for the above policy amounts enumerated in this subsection A, (1, 2 and 3).

B. CONSULTANT shall, prior to performance of any services, file with the City Clerk a certificate of insurance, on a City-approved form, certifying that the above insurance coverages shall remain in effect at all times during the term of this Agreement, or any extension thereof.

C. CONSULTANT agrees that the commercial general liability insurance policy shall be endorsed to name City, its City Council, officers and employees as additional insured and to provide that the coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance coverages.
### DISCLOSURE OF CONFLICT OF INTEREST

<table>
<thead>
<tr>
<th></th>
<th>YES*</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Are you currently in litigation with the City of Grover Beach or any of its agents?</td>
<td>□</td>
</tr>
<tr>
<td>2</td>
<td>Do you represent any firm, organization or person who is in litigation with the City of Grover Beach?</td>
<td>□</td>
</tr>
<tr>
<td>3</td>
<td>Do you currently represent or perform work for any clients who do business with the City of Grover Beach?</td>
<td>□</td>
</tr>
<tr>
<td>4</td>
<td>Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Grover Beach, or in a business which is in litigation with the City of Grover Beach?</td>
<td>□</td>
</tr>
<tr>
<td>5</td>
<td>Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Grover Beach employee who has any significant role in the subject matter of this service?</td>
<td>□</td>
</tr>
<tr>
<td>6</td>
<td>Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?</td>
<td>□</td>
</tr>
</tbody>
</table>

* If the answer to any question is yes, please explain in full below.

**Explanation:**

**Signature**

**Date**

**(name)**

**(company)**

**(address)**

**Additional page(s) attached.**

**Eng. Consulting Services Agreement 01**
AGREEMENT
CITY OF GROVER BEACH, CALIFORNIA
CONSULTANT SERVICES
CONSTRUCTION MANAGEMENT

THIS Agreement is made and entered into effective the ___ day of ______, 2014, by and between the CITY OF Grover Beach, a California municipal corporation (hereinafter referred to as "CITY"), and Digital West Networks Inc., a California corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to obtain professional construction management services for the installation and construction of conduit for Information Technology (IT) within the CITY's right of way along with other facilities and equipment necessary for an internet and broadband system, hereinafter referred to as the "Project;" and
WHEREAS, CONSULTANT is engaged in the business of furnishing technical and expert services as a Construction Manager and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and
WHEREAS, this Agreement will be administered for CITY by the Director of its Public Works Department (hereinafter referred to as "Director") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Work. CONSULTANT shall perform to the satisfaction of CITY the services described in Exhibit A, including all work incidental to, or necessary to perform, such services even though not specifically described in Exhibit A.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the complete rendition of the services herein, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in Exhibit A are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion but in any event, all such services shall be completed within 365 calendar days from such authorization to proceed.

3. Compensation.

   (a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed $57,631.00 paid on a time and material basis for all services herein and in accordance with the schedule of fees defined in Exhibit A.

   (b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business within 30 days.

   (c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification
shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment. The City Council for the CITY shall approve all changes in scope of services and the CITY's authorized representative shall be designated and delegated authority to sign by City Council approval.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; or (iii) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination in accordance with paragraph 3 (b).

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any termination or expiration of the Agreement, either party may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Director's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. CONSULTANT shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

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5. **Confidential Information, Ownership of Documents and Copyright license.**

   (a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of CITY. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

   (b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and unless CITY is in default of this Agreement, shall be turned over to CITY upon expiration or termination of the Agreement or default by CONSULTANT. CONSULTANT grants CITY a copyright license to use such drawings and writings. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. CITY may modify the design including any drawings or writings. Any use by CITY of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by CONSULTANT will be at CITY'S sole risk and without liability or legal exposure to CONSULTANT. CONSULTANT may keep a copy of all drawings and specifications for its sole and exclusive use.

   (c) This Section 5 shall survive expiration or termination of this Agreement.

6. **Professional Skill.** It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT from said professional standards.

7. **Indemnification.** Except with regard to professional negligent errors and omissions, as provided in the paragraph below, to the furthest extent allowed by law including California Civil Code Section 2782, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONSULTANT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of CONSULTANT'S performance of this Agreement. CONSULTANT’S obligations under the preceding sentence shall not apply to the extent or proportion that such loss, liability, fines, penalties, forfeitures, costs or damages are caused by the negligence or willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers.
Specifically regarding professional negligent errors and omissions, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by CITY, CONSULTANT or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), to the proportionate extent that it arises out of or in connection with the professional negligent errors or omissions of CONSULTANT in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraphs.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in Exhibit B or as may be authorized, and any additional insurance as may be required, in writing by CITY'S Administrative Service Director or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, CONSULTANT shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide
insurance protection in favor of CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor.

9. **Conflict of Interest and Non-Solicitation.**

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Grover Beach conflict of interest disclosure statement in the form as set forth in Exhibit C. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.
10. **General Terms.**

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Records of CONSULTANT’S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This Section 10(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

11. **Nondiscrimination.** To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT’S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venture, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

13. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

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14. **Binding.** Once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

15. **Assignment.**

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the Grover Beach City Council. Any attempted assignment by CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the Grover Beach City Council.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

16. **Compliance with Law.** In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

17. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

18. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be San Luis Obispo County, California.

19. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

20. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

21. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

22. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
23. **Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

24. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

25. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. Upon default under this Agreement, CITY may, at the time of default or any time thereafter, declare CONSULTANT in default of the Engineering/Design Consultant Agreement dated, ______, 2014, and the Conduit Lease Agreement, dated, ______, 2014 if the subject agreement(s) has been signed by the parties herein and is effective at the time of the default under this Agreement.

26. **No Third Party Beneficiaries.** The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

27. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.
IN WITNESS WHEREOF, the parties have executed this Agreement at Grover Beach, California, the day and year first above written.

CITY OF Grover Beach, a municipal corporation

By: __________________________
   Bob Perrault, City Manager

Digital West Network, Inc.
a California corporation

By: __________________________
   Tim Williams, CEO

APPROVED AS TO FORM:
David Hale
Assistant City Attorney

By: __________________________
   David Hale

Any Applicable Professional License:
Number: ________________________
Name __________________________
Date of Issuance ________________

Addresses:
CITY: City of Grover Beach
       Attention: Bob Perrault, City Manager
       154 S. Eighth Street
       Grover Beach, CA 93433
       Phone: (805) 473-4567
       FAX: (805) 489-9657

CONSULTANT: Digital West Network, Inc.
              Attention: Tim Williams, CEO
              3620 Sacramento Drive, #102.
              San Luis Obispo, CA 93401
              Phone: (805) 781-9378
              FAX: (805) 781-9379

Attachments:
1. Exhibit A - Scope of Work
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form
EXHIBIT A

SCOPE OF WORK

A. GENERAL

1. Work with CITY staff, and any contractors as directed by CITY including but not limited to architects, consultants, contractor prequalification consultant, prime contractor(s), sub-contractor(s) and all other required agencies for the successful completion of all assigned projects, as applicable.

2. Assist the City in development and implementation of a project phasing plan, if necessary;

3. Work with the City in the coordination and quality control of all project documentation. Provide quality assurance observations during construction. Prepare progress/status reports for cost, schedule, quality, etc. Reports are required throughout the duration of the project to be submitted on a monthly basis for review by the City.

4. Provide a comprehensive project schedule with sufficient detail to guide the City and all consultants in a timely completion of the project goals.

B. CONSTRUCTION MANAGEMENT

1. In conjunction with the City and the City's architect, assist, coordinate, and participate in project pre-construction and construction conferences;

2. Maintain complete files of all project documentation which shall include but not be limited to the following: design documents, estimates, bid documents, construction contracts, payment invoices, requests for information ("RFI's"), contractor's submittals and shop drawings, change orders, claims schedules, and correspondence;

3. Serve as the City's representative to all prime contractors for the administration of the construction contract(s) as provided under the General Conditions of prime contractor's agreement. When appropriate, make recommendations to the City for exercising the City's prerogatives under the construction contract(s) for each prime contractor's agreement;

4. Develop a cost loaded schedule detailing all prime contractor's agreement activities and also implement logging and tracking all project related information, including but not limited to contracts, payments, correspondence, and cost worksheet data;

5. Schedule and conduct all regular job-site progress meetings, transcribing and distributing meeting minutes, unless otherwise noted or agreed to by City or its representative(s);

6. Coordinate activities with the City's 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.

7. Receive and review the prime contractor's detailed cost-loaded baseline construction schedule for conformance to the requirements. Receive and review the prime contractor's detailed "Schedule of Values" for front end loading and compliance with contract requirements. Distribute the approved schedule to the City, any City designated consultant's, and other involved parties;

8. Develop, update, maintain and distribute the project schedule;

9. Receive and review the prime contractor's monthly schedule update and progress payment request. Review and confirm monthly prime contractor's payment requests with City representatives and IORs. 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.

10. 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 and City representatives 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;

11. Prepare, file, and distribute Project Status Reports as requested by the City on a monthly basis. Prepare and distribute logs reflecting current status of Change Orders, claims, contractor submittals, shop drawing and RFIs;

12. 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 and City representatives regarding appropriate action and response to prime contractor claims. If requested by the City, negotiate claims from the prime contractor on the behalf of the City, including recommendations concerning settlement, in conjunction with and subject to recommendations of City legal consultants.

13. Coordinate the receipt and storage of City-furnished, contractor-installed materials and equipment;

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

15. Schedule, coordinate and assist the City in the occupancy of the completed project or portions thereof.

C. CONTRACT CLOSE-OUT

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

2. Receive and review project record drawings and as-built drawings, and assist the City in the filing of these documents with the City; (Format of record drawings to be determined.)

3. Coordinate and schedule training sessions for City personnel, and verify that the prime contractor's obligations are fulfilled;

4. Make a final review of the project(s) and IOR 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 re-coordination of a notice of completion in conjunction with the City's architect and other City representatives or staff.

D. SCHEDULE
The listed services are anticipated to be performed over a period of 12 months from the date of the construction management contract.
E. FEE SCHEDULE

Digital West Networks, Inc., proposes to furnish the services detailed in this Exhibit at the following hourly unit rates:

- Senior Estimator: $75.00/ Hour
- Project Manager: $85.00/ Hour
- Project Administrator: $40.00/ Hour
- Project Clerk: $35.00/ Hour

Total Compensation shall not exceed that amount defined within Section 3 of this agreement.
EXHIBIT B

INSURANCE REQUIREMENTS
Consultant Service Agreement between City of Grover Beach and Digital West Network, Inc.
Construction Management

A. CONSULTANT shall obtain and maintain during the performance of any services under this Agreement the following insurance coverage issued by a company satisfactory to the City’s Administrative Services Director, Gayla R. Chapman, 805-473-4550, unless waived, in writing, the requirement that CONSULTANT obtain and maintain such insurance coverage.

1) Commercial general liability insurance including a contractual liability endorsement in an amount not less than $1,000,000 combined single limit for bodily injury and property damage for each claimant for general liability, including a non-owned automobile endorsement;

2) Errors and omissions insurance to a minimum coverage of $500,000, with neither CONSULTANT nor listed sub-consultants having less than $500,000 individually;

3) Workers’ compensation insurance in compliance with the laws of the State of California, including employer’s liability insurance in an amount not less than $1,000,000 per claimant.

4) An umbrella policy in an amount not less than $5,000,000 affording excess coverage for the above policy amounts enumerated in this subsection A, (1, 2 and 3).

B. CONSULTANT shall, prior to performance of any services, file with the City Clerk a certificate of insurance, on a City-approved form, certifying that the above insurance coverages shall remain in effect at all times during the term of this Agreement, or any extension thereof.

C. CONSULTANT agrees that all insurance coverages shall be provided by a California admitted insurance carrier with an A.M. Best Rate of A-7 or better and shall bear endorsements providing that the policies may not be cancelled or modified without thirty (30) days’ prior written notice to the City Clerk.

D. CONSULTANT agrees that the commercial general liability insurance policy shall be endorsed to name City, its City Council, officers and employees as additional insured and to provide that the coverages provided to City shall be primary and not contributing to or in excess of any existing City insurance coverages.
Exhibit C  
DISCLOSURE OF CONFLICT OF INTEREST

**Construction Management**

<table>
<thead>
<tr>
<th></th>
<th>YES*</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Are you currently in litigation with the City of Grover Beach or any of its agents?</td>
<td>☐</td>
</tr>
<tr>
<td>2</td>
<td>Do you represent any firm, organization or person who is in litigation with the City of Grover Beach?</td>
<td>☐</td>
</tr>
<tr>
<td>3</td>
<td>Do you currently represent or perform work for any clients who do business with the City of Grover Beach?</td>
<td>☐</td>
</tr>
<tr>
<td>4</td>
<td>Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Grover Beach, or in a business which is in litigation with the City of Grover Beach?</td>
<td>☐</td>
</tr>
<tr>
<td>5</td>
<td>Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Grover Beach employee who has any significant role in the subject matter of this service?</td>
<td>☐</td>
</tr>
<tr>
<td>6</td>
<td>Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?</td>
<td>☐</td>
</tr>
</tbody>
</table>

* If the answer to any question is yes, please explain in full below.

Explaination: ____________________________

______________________________________

______________________________________

______________________________________

______________________________________

______________________________________

Signature  

______________________________________

(name)  

______________________________________

(company)  

______________________________________

(address)  

(city state zip)  

[ ] Additional page(s) attached.
CONDUIT LEASE AGREEMENT

This Conduit Lease Agreement (this "Lease Agreement") is made and entered into as of the _____ day of _____, 2014 (the "Effective Date"), by and between the City of Grover Beach, a municipal corporation ("City") and Digital West Networks, Inc, a California Corporation ("Lessee").

RECITALS

WHEREAS, Lessee is a registered Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013 and holds a valid full-facilities-based certificate of public convenience and necessity ("CPCN") issued by the California Public Utilities Commission on February 22, 2010 (Decision 10-02-013); and

WHEREAS, Lessee is proposing to install a fiber system using City owned conduit (with some aerial coverage) that would result in distributing Broadband Fiber Network to all Key Commercial and Industrial locations within the City; and

WHEREAS, the system would be integrated with the Lessee's broadband system coming south from San Luis Obispo area; and

WHEREAS, City owns certain PVC/high density polyethylene conduit located within City right-of-ways (the "City System"); and

WHEREAS, Lessee desires to construct, install, operate, and maintain, at no cost to City, certain fiber optic facilities to provide its services ("Lessee's Fibers"), and for that purpose desires to lease from City a portion of the City System identified and more particularly described in Exhibit A hereto (the "Leased Conduit"); and

WHEREAS, as defined hereafter, Lessee shall be giving to City certain fiber optic cable to exclusively use for whatever purposes it chooses ("City's Fibers"), and

WHEREAS, City is willing to lease a portion of its conduit, the Leased Conduit, to Lessee and allow Lessee to pull dark fiber optic cables for that purpose, subject to the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:
ARTICLE 1. LEASE

1.1 City, for and in consideration of the rents and covenants herein specified to be paid and performed by Lessee, hereby demises and leases to Lessee, and Lessee hereby hires and leases from City, the Leased Conduit, on an "as is, where is basis" without warranty for the Term and upon and subject to the terms and conditions and for the purposes herein set forth. All installation and cost for pulling Lessee Fibers and City's Fibers is at Lessee's cost and expense.

ARTICLE 2. CONSIDERATION

2.1 The consideration for the grant of lease in the Leased Conduit shall consist of an annual recurring charge ("ARC") and the granting to City of 2 x 24 count fiber optic cables for City's exclusive and sole use as it determines which is more fully described as follows:

(a) The ARC shall be as follows, and shall be subject to the annual adjustment described in (c) below:

(1) Lessee shall pay to City lease rent at the rate of 5.1 percent of Lessee's total gross revenues per year. Gross revenues are defined as "all consideration of any kind or nature, including cash, credits, property, and in-kind contributions (services or goods) received by the Lessee from the provision of any services performed by Lessee within the City jurisdictional boundaries".

(b) A prorated portion of the first ARC shall be due within ten (10) days following the Effective Date. Thereafter, Lessee shall pay the annual amount of the ARC in full within thirty (30) days following receipt of the annual invoice therefor.

(c) The ARC for any period that is less than a full year shall be a prorated portion of the ARC based on the actual number of days in such year.

(d) The Lessee shall also grant complete ownership and full proprietary interest to City for 2x 24 count fiber optic cables, (City's Fibers) which shall be installed by Lessee in conduit owned by the City which is not part of the Leased Conduit. Contained within City's rights-of-way, there will be multiple conduits of varying numbers some of which will be leased to Lessee as defined within Exhibit "A" and the remaining will be owned by City unencumbered by this Agreement or leasehold interest which shall be referred to herein as ("City's Conduit"). As more fully described in Exhibit A, the design and location of City's Fibers shall be identified within City's Conduit in a redundant configuration and terminated into a City-patch panel at each location.

ARTICLE 3. TERM

3.1 Commencement. The term of this Lease (the "Term") shall commence on the Effective Date and shall expire ten (10) years following the Effective Date.
3.2 **Renewal.** Provided that Lessee is not in default under this Lease Agreement, and the Lessee has the necessary governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, City and Lessee may negotiate in good faith to renew and/or extend this Lease Agreement in five year increments on mutually agreeable terms and conditions. Any agreed upon extension of the conduit that expands the system defined within Exhibit A herein, shall not increase the term of this Agreement without mutually agreement by both parties.

3.3 **Holding Over.** If Lessee shall hold over after the expiration of the Term, Lessee shall pay rent equal to one hundred fifty percent (150%) of the ARC payable during the final full lease year (exclusive of abatements, if any), together with an amount reasonably estimated by City and any other charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (but expressly excluding all renewal or extension rights). Lessee shall be liable to City for any loss, damages or liability of City resulting from Lessee's failure to vacate upon the expiration or earlier termination of this Lease. No holding over by Lessee after the Term shall operate to extend the Term. If Lessee fails to surrender the Premises or any part thereof upon the expiration or termination of this Lease despite City's demand to do so, Lessee shall indemnify, defend, protect and hold City harmless from all claims, losses, costs, expenses, damages and liabilities, including attorneys' fees, City incurs as a result of Lessee's failure to surrender, including, without limitation, any claim made by any succeeding tenant founded on or resulting from such failure.

3.4 **Title.** It is understood and agreed that City shall maintain legal title to the entire City Conduit System, subject to this Lease in the Leased Conduit while Lessee shall retain legal title to the fiber optic cable except City's Fibers wherein ownership interest has been transferred to City in accordance with Article 2.

**ARTICLE 4. NETWORK ACCESS**

4.1 **Shared Facilities.** City hereby grants to Lessee a non-exclusive license, subject to the limitations and other provisions of this Lease Agreement, to any manholes and handholes (the "Ancillary Facilities") that are necessary to access the Leased Conduit of City's Fibers identified in Exhibit A and that is solely in connection with its use of the Leased Conduit or other obligations of Lessee as defined within this Agreement. Lessee shall notify City at least three (3) days in advance if it wishes access to an Ancillary Facility, and City shall have the right to have a representative present during any access to an Ancillary Facility.

4.2 **Costs.** Lessee shall pay City its Costs in connection with each access to an Ancillary Facility, within thirty (30) days of the date of Lessee's receipt of City's invoice therefore. For purposes of this Lease Agreement, "Costs" means all reasonable and direct costs incurred by City in accordance with generally accepted
accounting principles and incurred by City for necessary work or services performed in support of Lessee's request to use the Ancillary Facilities.

ARTICLE 5. PERMITS; UNDERLYING RIGHTS; RELOCATION

5.1 Governmental Approvals, Permits and Consents.

(a) Lessee at its sole cost and expense, shall obtain and maintain any and all necessary governmental permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance, including but not limited to a City Business Tax Certificate and shall continuously comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to (1) its operation or use of the Leased Conduit; and (2) Lessee's other rights and obligations under this Lease Agreement.

(b) Lessee shall ensure that its customers obtain and maintain any and all necessary permits, licenses, easements, franchises and approvals that may lawfully be required by federal, state or local law, statute, regulation or ordinance and comply with all such laws, statutes, regulations or ordinances as may now or in the future be applicable to the Lessee's customers' use of the services provided over the Leased Conduit.

(c) If Lessee, its customers or any permitted assignee shall at any time fail to maintain such approvals or comply with all applicable legal requirements described in paragraphs (a) and (b) above, City may terminate this Lease Agreement under Article 10, without liability and without restriction to any other legal, equitable, or administrative remedy available to City. Lessee may contest the applicability or validity of any alleged legal requirement asserted against it or its customers, provided that Lessee gives prompt notice of such contest to City, adheres to proper legal procedures applicable to any such challenge, and indemnifies and holds harmless City and its affiliates and their officers, directors, employees, agents, servants, and assigns from any loss, damage, claims or proceedings to the extent resulting from such challenge or from the failure of Lessee, its customers, their contractors or their subcontractors to comply with this Section 5.1.

5.2 Relocations. City may relocate all or any portion of the City System or any of the facilities used or required in providing Lessee with the Leased Conduit: (1) if a third party with legal authority to do so orders or threatens to order such relocation (e.g., through filing or threatening to file a condemnation suit); (2) in order to comply with federal, state or local applicable laws; (3) to prevent or abate interference with or interruption of the City System, or an unreasonable risk thereof, due to the existence of physical conditions; or (4) if City determines to do so in its reasonable business judgment. City shall provide Lessee as much advance notice as possible but shall use reasonable efforts to provide at least sixty (60) calendar days' prior notice of
any such relocation. City shall bear the costs of relocating its facilities and the Leased Conduit unless such relocation is proximately caused in whole or part by Lessee’s negligence of material violation of this Agreement.

**ARTICLE 6. USE OF LEASED CONDUIT, MAINTENANCE**

6.1 **Interference.** Lessee shall not use the Lessee Fibers in a way that interferes in any way with or adversely affects the use of the fibers or cable of any other person using the City System or any of the other City owned facilities or infrastructure contained within City’s rights-of-way. Lessee acknowledges that the City System includes or will include other participants, including City, the County of San Luis Obispo and other owners and users of fiber and telecommunication systems.

6.2 **Maintenance.** Lessee shall bear all costs associated with its use of the Leasees' Fibers, including without limitation the cost of installation, maintenance and repairs of the Lessees' Fibers and City's Fibers acquired in accordance with Article 2. Such installation, maintenance and repairs shall be performed in a good and workmanlike manner, in conformity with such requirements and specifications as City may from time to time prescribe, in accordance with the specifications of the Maintenance and Operations Plan of this Lease Agreement, Exhibit B, the National Electrical Safety Code, the National Electrical Code, and any statewide electric codes adopted by the State of California or any department or agency thereof, applicable industry standards, and in accordance with laws and regulations of any federal, state or local government, or any agency or instrumentality thereof, having competent jurisdiction over Lessee, Leasees' Fibers, City's Fibers or the Leased Conduit including applicable General Orders of the Public Utilities Commission of the State of California and any supplements thereto and revisions thereof. Lessee shall be responsible for the proper design and maintenance of its fiber optic facilities, including City's Fibers given to the City in accordance with Article 2, and other equipment that occupies shared right of way systems or other facilities, and shall perform work in shared conduit systems and other facilities in a safe and workmanlike manner and at its sole cost. Lessee shall permanently identify, by tags or other suitable means, all of its cables and other equipment that are placed in shared conduit systems or other facilities. Each party agrees to take all necessary precautions to avoid damaging the other party's facilities and to protect such facilities in the same manner as such party protects its own facilities. City shall be responsible for maintenance of Leased Conduit unless such maintenance is necessary due to Lessee’s negligence, omission or breach of this Agreement. In the event that repair or maintenance of the Leased Conduit is due to Lessees' negligence, Lessee shall have an affirmative duty to repair and maintain at their cost.

6.3 **No Sub-Lease.** The Lessee may not sublease the Leased Conduit.

6.4 **No Liens.** The Lessee shall at all times keep the Leased Conduit or City’s Conduit free and clear from any and all liens, claims, and demands for work performed,
materials furnished, or operations conducted on said Leased Conduit or City's Conduit by Lessee. In the event the Leased Conduit or City's Conduit becomes subject to a lien, claim, demand for work or materials performed or any encumbrance of title not approved by City, Lessee shall immediately take such necessary efforts to clear the encumbrance of title to the Leased Conduit or City's Conduit.

6.5 Right of Inspection. City shall have the right to inspect the Leased Conduit and the Lessee Fibers installed in the Leased Conduit during the Term.

ARTICLE 7. LIMITATION OF LIABILITY/INDEMNITY

7.1 Lessee shall indemnify, protect, defend and hold harmless City, the City System, City's Fibers obtained in accordance with Article 2, the Leased Conduit, City's agents, employees, public officials, council members, and the respective agents and employees of each of these parties (each a "City's Party," collectively "City Parties"), from and against any and all claims, loss of rents and/or damages, losses, costs, liens, judgments, penalties, loss of permits, reasonable attorneys' and consultants' fees, expenses and/or liabilities (collectively "Claims") arising out of, involving, or in connection with this Lease; the use or occupancy of the Lease Conduit or the City System; the conduct of Lessee's business; any act, omission, fault or neglect of Lessee, its agents, employees, representatives, contractors, customers, sublessees, licensees, invitees or other visitors; and out of any default or breach by Lessee in the performance in a timely manner of any obligation on Lessee's part to be performed under this Lease Agreement including, without limitation, any violation of or failure to comply with laws; excepting only to the extent such Claims are caused by the negligent or willful acts or omissions of City or its authorized representatives. The foregoing indemnity shall include, but not be limited to, the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of Claims made against City and/or any City's Party) litigated and/or reduced to judgment. In case any action or proceeding is brought against City or any City's Party by reason of any of the foregoing matters, Lessee upon notice from City shall defend the same at Lessee's expense by counsel reasonably satisfactory to the indemnified party and City shall cooperate with Lessee in such defense. The indemnified party need not have first paid any such claim in order to be so indemnified. The obligations of Lessee under this Section 7.1 shall survive the expiration or termination of this Lease Agreement. Notwithstanding the foregoing provisions, Lessee shall not be obligated to indemnify City for any Claims arising (i) outside the Leased Conduit to the extent not caused by the negligence or willful misconduct of Lessee, or Lessee's employees, invitees or guests, agents or contractors, or (ii) inside the Leased Conduit to the extent arising from the negligence or willful misconduct of City, or City's employees, invitees or guests, agents or contractors. The indemnity obligations of Lessee under this Section 7.1 are not intended to, and shall not, (i) restrict or modify Lessee's insurance and other obligations under this Lease; (ii) be restricted, limited or modified by Lessee's compliance with its insurance and other obligations under this Lease or (iii) supersede any inconsistent agreement of the parties set forth in any other provision of this Lease.
ARTICLE 8. INSURANCE

8.1 Lessee shall obtain and maintain in force, at its own expense, and shall require each of its contractors and subcontractors to obtain and maintain in force:

(a) Commercial General Liability Insurance, in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence, combined single limit, written on an occurrence form;

(b) Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than $1,000,000.00 per accident;

(c) Comprehensive Auto Liability coverage, including owned, non-owned and hired autos in an amount of not less than One Million Dollars ($1,000,000.00) per occurrence, combined single limit, written on an occurrence form.; and

(d) Any other insurance coverages specifically required or adjustment to the above coverage as set forth above in the event the City's Risk Manager determines that such adjustment is in the City's best interest.

(e) City shall be listed as an additional insured on all commercial general liability and commercial automobile insurance policies relevant to the project and maintained by the Lessee and the Lessee's contractors and subcontractors.

8.2 Unless otherwise agreed, Lessee's insurance policies shall be obtained and maintained with companies rated "A" or better by Best's Key Rating Guide and each party shall provide the other with an insurance certificate confirming compliance with this requirement for each policy providing such required coverage.

8.3 If Lessee fails to obtain the required insurance or fails to obtain the required certificates from any contractor and a claim is made or suffered, Lessee shall indemnify and hold harmless City from any and all claims for which the required insurance would have provided coverage. Further, in the event of any such failure which continues after seven (7) days' written notice thereof by City, City may, but shall not be obligated to, obtain such insurance and will have the right to be reimbursed for the cost of such insurance by the Lessee.

8.4 If coverage is denied or reimbursement of a properly presented claim is disputed by the carrier for the insurance provided above, the Lessee shall make good faith efforts to pursue such claim with its carrier.

ARTICLE 9. NOTICES

9.1 All notices and other communications required or permitted under this Lease Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, registered or certified, return receipt requested, or by hand delivery
(including by means of a professional messenger service or overnight mail) addressed as follows:

To Lessee at:
Digital West Network, Inc.
Attention: Tim Williams, CEO
3620 Sacramento Drive, #102,
San Luis Obispo, CA 93401
Phone: (805) 781-9378
FAX: (805) 781-9379

To City at:
City of Grover Beach
Attention: City Manager
154 S. Eighth Street
Grover Beach, CA 93433
Phone: (805) 473-4567
FAX: (805) 489-9657

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

ARTICLE 10. DEFAULT

10.1 Defined. A default shall be deemed to have occurred under this Lease Agreement if:

(a) In the case of a failure to pay any amount when due and payable under this Lease Agreement, the Lessee fails to pay such amount within fifteen (15) days of when due; or

(b) In the case of any other material breach of this Lease Agreement, a party fails to cure such within thirty (30) days after notice specifying such breach, provided that if the breach is of a nature that it cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

10.2 Remedies. Upon the failure of a party to comply with Section 10.1 (a) or to timely cure any breach after notice thereof from the other party and expiration of the above cure periods as defined in Section 10.1 (b), then the non-defaulting party may, subject to the terms of Article 7 (Limitation of Liability/Indemnity), pursue all
remedies provided for in this Lease Agreement and/or any remedies it may have under applicable law or principles of equity relating to such breach.

10.3 City Remedies. In addition to the remedies set forth in Section 10.2, if Lessee fails to pay in full any ARC within fifteen (15) days beyond the due date(s), or if Lessee fails to cure any other default of the terms of this Lease Agreement within the cure periods described in Section 10.1 above, City may, in addition to any other remedies that it may have under this Lease Agreement or by law, in its sole discretion, take the following actions upon ninety (90) calendar days' notice if such payment (together with applicable interest) is not made within such 90-day period:

(a) Disconnect and remove at Lessee's expense the Lessee Fibers; and/or

(b) Terminate this Lease Agreement.

At the expiration or termination of this Lease subject to this Article, all rights of Lessee to use the Leased Conduit, or any part thereof, shall cease, and the Lessee shall surrender to City possession of the Leased Conduit. All rights to the use of the Leased Conduit therein shall revert to City without reimbursement of any ARC, Lease fee or other sums, costs, fees or expense previously made with respect thereto.

10.4 No Waiver. A waiver by either party at any time of any of its rights as to anything herein contained shall not be deemed to be a waiver of any breach of covenant or other matter subsequently occurring.

10.5 Interest. If Lessee fails to make any payment under this Lease Agreement when due, such amounts shall accrue interest, from the date such payment is due until paid, including accrued interest, at an annual rate of eighteen percent (18%) compounded monthly or, if lower, the highest percentage allowed by law.

ARTICLE 11. ABANDONMENT

11.1 Should Lessee, for any reason, abandon all or part of its use of capacity or facilities installed pursuant to this Lease Agreement, then the below provisions shall apply. "Abandon" shall be defined for the purposes of this Lease Agreement as failure to use the Leased Conduit for more than one year or at such time that notice of abandonment is provided by Lessee.

(a) If City rejects all or a portion of the proposed transfer of abandoned facilities from Lessee, then Lessee shall remove any facilities it proposed to abandon which were rejected by City within ninety (90) days of City's rejection. If the Lessee fails to so remove the abandoned rejected facilities, then City may remove them at Lessee's expense, which shall be paid within thirty (30) days of receipt of the invoice.
(b) At the time of any accepted abandonment, Lessee shall have no further rights with respect to the abandoned facilities. At such time, City shall have the authority to remove, reuse, or resell the abandoned facilities.

(c) Unless expressly rejected by City in writing within 90 days of a written abandonment notification, Lessee's abandoned facilities shall be transferred to the ownership of City.

ARTICLE 12. TERMINATION

12.1 Termination. If Lessee is not in default of this Agreement as defined within Article 10, or has not abandoned the Leased Conduit as defined in Article 11, and if at the expiration of the Term as defined within Article 3 of this Agreement or any mutually agreed upon extensions to the Term, Lessee shall have the election to do either of the following:

(a) Lessee will remove all fiber optic cable owned by Lessee within the City's conduit except those lines dedicated and owned by the City, City's Fibers; or

(b) Upon payment made to the City in the amount of $380,000.00, Lessee may remove all fiber optic cable within City's conduit except the City's fiber optic cable but Lessee may retain one conduit dedicated to the fiber optic cable owned by Lessee.

(c) As an alternative to (a) and (b) above, the parties if mutually agreed upon, may leave the fiber optic cable in the City's conduit wherein City will acquire and retain all proprietary and ownership interest to the fiber optic cable and conduit at no cost to the City with no further right, title or interest by Lessee in any of the Lessees' Fiber. In the event the parties fail to mutually agree to this subsection (c), Lessee shall be obligated to comply with subsections (a) or (b) of this Article 12.

ARTICLE 13. TRANSFERS, ASSIGNMENTS AND EXPANSION

13.1 Lessee may not transfer or assign all or any part of its interest in this Lease Agreement or in the Leased Conduit, in whole or in part, or delegate any duties, burdens, or obligations arising hereunder, without the prior written consent of City, which consent may not be unreasonably withheld. A transfer or assignment in violation of this Article shall be void and shall constitute a material breach of this Lease Agreement.

13.2 Any desire or interest of either party to this Agreement for future expansion of the system will be subject to following: 1) City shall have the initial right to expand the system by competitively bidding and paying prevailing wage through its own contractors and receiving additional lease revenue for use of that system by Lessee consistent with the compensation structure of agreement; 2) Lessee may develop, construct and lay
their own conduit and hook up customers only to that part of the City System expanded in accordance with this subsection with no lease payment to City based on those revenues generated by the private line if City decides not to exercise its rights in option one; 3) Lessee and City both decide not to expand system. If City exercises its rights under option 1 of this section 13.2, all other provisions of this Agreement shall apply not inconsistent with this Article.

ARTICLE 14. REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGMENTS

14.1 Each party represents and warrants that:

(a) It has the full right and authority to enter into, execute, deliver and perform its obligations under this Lease Agreement; and

(b) This Lease Agreement constitutes a legal, valid and binding obligation enforceable against such party in accordance with its terms, subject to bankruptcy, insolvency, creditors’ rights and general equitable principles.

14.2 CITY MAKES NO WARRANTY, EXPRESS OR IMPLIED WITH RESPECT TO THE LEASED CONDUIT, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

ARTICLE 15. FORCE MAJEURE

Neither party shall be liable to the other party and each party’s performance under this Lease Agreement shall be excused, if and to the extent that any failure or delay in such party’s performance of one or more of its obligations hereunder caused by any of the following conditions, and such party’s performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire, flood; war or civil disorder; strikes or other labor disputes; or any other cause beyond the reasonable control of such party (“Force Majeure Event”). The party claiming relief under this Article shall notify the other in writing of the existence of the event relied on and the cessation or termination of said Force Majeure Event, and the party claiming relief shall exercise reasonable commercial efforts to minimize the time of any such delay; PROVIDED HOWEVER THAT, the provisions of this paragraph shall not operate so as to excuse or release Lessee from the prompt payment of the ARC or other amounts due and payable under this Lease Agreement. PROVIDED FURTHER THAT, if the City System and/or the Leased Conduit are totally destroyed, or rendered unusable, by a Force Majeure Event, City may terminate this Lease Agreement, without liability to Lessee, as of the date of such Force Majeure Event.
ARTICLE 16. GENERAL

16.1 Binding Effect. The failure of either party hereto to enforce any of the provisions of this Lease Agreement, or the waiver thereof in any instance shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

16.2 Taxes. City hereby provides notice pursuant to California Revenue and Taxation Code Section 107.6, and Lessee acknowledges that this Lease Agreement may create a possessory interest and Lessee may be subject to property taxes levied on such interest, as described in California Revenue and Taxation Code Section 107. Lessee shall be responsible for and shall pay all Impositions:

(a) Imposed on, based on, or otherwise measured by the gross receipts, gross income, net receipts or net income received by or accrued to Lessee with respect to the ownership or use of the Leased Conduit; or

(b) Which have been separately assessed, allocated to, or imposed on the Leased Conduit; or

(c) Which are imposed, based on, or otherwise measured with respect to construction services performed by City for Lessee.

"Impositions" means all taxes, fees, levies, imposts, duties, charges or withholdings of any nature (including, without limitation, possessory interest taxes, franchise, license and permit fees), together with any penalties, fines or interest thereon arising out of the transactions contemplated by this Lease Agreement that are imposed upon the City System by any federal, state or local government or other public taxing authority; but shall not include taxes, fees or similar levies based on income.

16.3 Attorney’s Fees. If either party brings any legal action or proceeding against the other to enforce or interpret this Lease Agreement, or otherwise arising out of this Lease Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party its reasonable costs and expenses of suit and enforcing the judgment awarded to it, including reasonable attorneys’ fees, in addition to any other relief or award to which it may be entitled.

16.4 Governing Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California without reference to its choice of law principles and any action brought relating to this Agreement shall be held exclusively in a state court in the County of San Luis Obispo, California.

16.5 Rules of Construction. The captions or headings in this Lease Agreement are strictly for convenience and shall not be considered in interpreting this Lease Agreement or as amplifying or limiting any of its content. Words in this Lease Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.
(a) Unless expressly defined herein, words having well known
technical or trade meanings shall be so construed.

(b) Except as set forth to the contrary herein, any right or remedy
of Lessee or City shall be cumulative and without prejudice to any other right or
remedy, whether contained herein or not.

(c) Nothing in this Lease Agreement is intended to provide any
legal rights to anyone not an executing party of this Lease Agreement.

(d) This Lease Agreement has been fully negotiated between
and jointly drafted by the parties.

(e) All actions, activities, consents, approvals and other
undertakings of the parties in this Lease Agreement shall be performed in a
reasonable and timely manner, it being expressly acknowledged and understood that time
is of the essence in the performance of obligations required to be performed by a date
expressly specified herein. Except as specifically set forth herein, for the purpose of this
Lease Agreement the standards and practices of performance within the
telecommunications industry in the relevant market shall be the measure of a
party's performance.

16.6 Entire Agreement. This Lease Agreement, together with any
Confidentiality Agreement entered into in connection herewith, constitutes the
entire and final agreement and understanding between the parties with respect to
the subject matter hereof and supersedes all prior agreements relating to the
subject matter hereof, which are of no further force or effect. The Exhibits referred to
herein are integral parts hereof and are hereby made a part of this Lease Agreement.
To the extent that any of the provisions of any Exhibit hereto are inconsistent with the
express terms of this Lease Agreement, the terms of this Lease Agreement shall
prevail. This Lease Agreement may only be modified or supplemented by an
instrument in writing executed by each party.

16.7 Relationship of the Parties. The relationship between Lessee and City
shall not be that of partners, agents, or joint venturers for one another, and nothing
contained in this Lease Agreement shall be deemed to constitute a partnership or agency
agreement between them for any purposes, including, but not limited to, federal
income tax purposes. Lessee and City, in performing any of their obligations
hereunder, shall be independent contractors or independent parties and shall discharge
their contractual obligations at their own risk subject, however, to the terms and conditions
hereof.

16.8 Severability. If any term, covenant or condition contained herein is,
to any extent, held invalid or unenforceable in any respect under the laws governing this
Lease Agreement, the remainder of this Lease Agreement shall not be affected
thereby, and each term, covenant or condition of this Lease Agreement shall be valid
and enforceable to the fullest extent permitted by law.
16.9 **Legislative function of City:** This is a proprietary contract and is subject to the legislative functions and power of the City and right of eminent domain and nothing within this Agreement shall waive or restrict any of those legislative functions or rights of the City.

16.10 **Lessee's Customer Contracts:** Lessee shall provide in any contracts with third party customers a provision that holds City harmless and without liability in the event Lessee breaches any third party customer contracts, goes into bankruptcy, fails to perform or is in default under this Agreement or the third party customer contracts, this Agreement is terminated, or City exercises any rights it has under this Agreement.

16.11 **Lessee's Marketing Plan:** It is understood by the parties herein that City's initial capital contribution for construction and installation of the conduit for Lessee's Fiber is for the purpose of developing a Broadband Fiber Network for commercial and industrial clients in the City. City's compensation is directly dependent upon the growth and implementation of the system. Therefore Lessee's marketing plan is attached as Exhibit C and incorporated by reference. Failure to substantially comply with implementation of the plan, shall be considered a default by Lessee in accordance with Article 10 of this Agreement. City shall be entitled to exercise those remedies defined therein.

16.12 **Pacific Crossing:** Pacific Crossing is the owner of a trans-Pacific cable allowing internet and data access to other countries. Lessee agrees to facilitate and assist third party customers to be able to connect to Pacific Crossing in the event a third party client within the City’s jurisdiction decided to subscribe to Pacific Crossing’s services.

16.13 **Maintenance Plan:** Lessee's Maintenance and Operation plan is attached hereto as Exhibit B, and is incorporated by reference. Lessee shall maintain Lessees' Fiber and the City's Fibers consistent with Exhibit B, and any material deviation or failure to comply with the Maintenance and Operation Plan shall be considered a material breach of this Agreement.

16.14 **Lessees' Customers:** Lessee agrees to include in all contracts with any third parties or customers of Lessee which would use Lessees' Fiber a provision that in the event Lessee breaches or fails to supply service to those third party/customer contracts, goes into bankruptcy or fails to perform either under this Agreement or any contracts with their customers, the City would have no liability to their customers in exercising any rights it has under this Agreement.
IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the Effective Date. IN WITNESS WHEREOF, the parties have executed this Agreement at Grover Beach, California, the day and year first above written.

CITY OF Grover Beach,  
a municipal corporation

By: __________________________  
Debbie Peterson, Mayor

Digital West Networks, Inc.  
a California Corporation

By: __________________________  
Tim Williams, CEO

APPROVED AS TO FORM:  
David Hale  
Assistant City Attorney

By: __________________________  
David Hale
EXHIBIT A
DESCRIPTION OF LEASED CONDUIT

The following is the route used for the purpose of completing a new Fiber Optic Network in the City of Grover Beach, CA for Digital West Networks, Inc. As part of this conduit lease, Digital West will provide fiber to the City of Grover Beach for it's internal use. The below routes are specific to sections reflected in the drawings on attached pages 1 and 2 of this Exhibit A.

1. **Section 1a** of Drawing 1 of 2 of Exhibit A uses the conduit from the north side of Atlantic City Ave. to the South side of Newport Ave. along the west side of Front Street.

   **DW to occupy 2 x 1.25" conduits**

2. **Section 1b** of Drawing 1 of 2 of Exhibit A makes use of an existing 4 inch conduit from the south side of Newport Ave. to the north side of Ramona Ave. along the west side of Front Street.

   **DW to occupy 2 x 1.25" conduits**

3. **Section 2** of Drawing 1 of 2 of Exhibit A uses the conduit from the northwest corner of Front Street and Ramona Street along the south side of Ramona Ave. to the west side of 4th Street, then south along the west side of 4th Street to Rockaway Ave.

   **DW to occupy 2 x 1.25" conduits**

4. **Section 4** of Drawing 1 of 2 and Drawing 2 of 2 of Exhibit A, uses conduits from the northwest corner of Rockaway Ave. and S. 4th St, to the northwest corner of S. 4th St. and Farrell Rd along the west side of S. 4th St.

   **DW to occupy 2 x 1.25" conduits**

5. **Section 5.1** of Drawing 1 of 2, of Exhibit A, uses conduits from the northwest corner of Rockaway Ave. and S. 4th St, to the northwest corner of S. 16th St. and Longbranch Ave., along the north side of Rockaway Ave and the north side of Longbranch Ave.

   **DW to occupy 1 x 1.25" conduit**

6. **Section 5.2** of Drawing 1 of 2, of Exhibit A, uses the conduit from the northeast corner of Rockaway Ave. along the west side of S. 7th St. to a riser pole location.

   **DW to occupy 1 x 1.25" conduit**

7. **Section 5.4** of Drawing 1 of 2, of Exhibit A, uses the conduit from the northwest corner of S. 11th St. and Rockaway Ave. along the west side of S. 11th St. to the southwest corner of Grand Ave. and S. 11th St.

   **DW to occupy 1 x 1.25" conduit**
8. **Section 5.5** of Drawing 1 of 2, of Exhibit A, uses the conduit from the northwest corner of S. 13th St. and Longbranch Ave. along the west side of S. 13th St. to the southwest corner of Grand Ave. and S. 13th St.

   **DW to occupy 1 x 1.25” conduit**

9. **Section 5.6** of Drawing 1 of 2, of Exhibit A, uses the conduits from the northwest corner of S. 16th St. and Longbranch Ave. along the west side of S. 16th St. to the southwest corner of Grand Ave. and S. 16th St.

   **DW to occupy 1 x 1.25” conduit**

10. **Section 6l** of Drawing 2 of 2, of Exhibit A, uses the conduit from a point approximately 560’ south of Farroll Rd. south to 948 Huber St. (Pacific Crossing Building).

    **DW to occupy 1 x 1.25” conduit**

11. **Section 6m** of Drawing 2 of 2, of Exhibit A, uses the conduit from northeast corner of Griffin St. and Farroll Rd. along the east side of Griffin St.

    **DW to occupy 1 x 1.25” conduit**

12. **Section 6n (Optional)** of Drawing 2 of 2, of Exhibit A, uses the conduit from the east side of Griffin St. to an existing riser pole on the southeast corner of Griffin St. and Highland Way.

    **DW to occupy 1 x 1.25” conduit**

13. **Section 6o** of Drawing 2 of 2, of Exhibit A, uses the conduit from the southeast corner of Farroll Rd. and Huston St, along the east side of Huston St. to an existing riser pole on the southeast corner of Huston St. and Highland Way.

    **DW to occupy 1 x 1.25” conduit**
EXHIBIT B

OPERATIONAL MANAGEMENT PLAN (OMP) FOR CONDUIT OCCUPANCY PARTNERSHIP

The Parties, the City of Grover Beach (City) and Digital West Network, Inc. (Digital West) wish to create an Operational Management Plan agreeable to both entities. This Operational Management Plan will enable the care and restoration of a mutually beneficial Conduit Occupancy Partnership within portions of the City of Grover.

1. Definitions

For purposes of this Operational Management Plan (OMP) only, the following terms are defined:

a. "Cable" means the fiber optic cable, the fiber contained therein, and associated splicing connections and enclosures, each to be installed by or on behalf of Digital West as part of the optical fiber network covered under the terms of this.

b. "Conduit" means a tube especially constructed for the purpose of placing and enclosing fiber optic cable.

c. Dark Fiber" means one or more strands of fiber through which no associated light, signal or light communication transmission is provided to furnish service.

d. "Fiber" means filaments of dielectric material designed for the purpose of light-wave transmission.

e. "Lit Fiber" means Strands with respect to which an associated light, signal or light communication transmission has been provided.

f. "Party" means either Digital West or City, with the plural ("Parties") meaning both Digital West and City.

g. "Strands" means individual fiber optic strands.

2. Maintenance and Restoration

2.1. City's Responsibilities:

For the duration of this agreement and any extensions thereof, City agrees to:

a. Maintain and repair the Conduit, as needed in the event of damage or flooding;
b. Maintain City's GIS Conduit shape files and maintain City's Conduit database by noting which conduit(s) are subject to the terms of this OMP.

2.2. Digital West's Responsibilities:

For the duration of this agreement and any extensions thereof, Digital West agrees to:

a. Contract for and administer a contract to repair/install and/or pull fiber optic cable, splice and terminate fiber optic cable in various locations within the City of Grover Beach city limits and the Digital West network as specifically listed below:

b. Fiber Optic Cable Emergency Response:

Section 1. Digital West Network Operations Center shall provide 24 hour, 7 days a week phone response.

Section 2. Digital West Field Operations shall respond to any fiber service interruption within 4 hours of notification. (Conduit repair associated with break must be done in conjunction and in, some cases, prior to fiber repair with conduit repair by City).

Section 3. All efforts will be made to complete repairs to damaged fiber within 8 hours of a Field Operations response. (Limiting factors to be included are denied location access, length of fiber damaged, aerial or underground contractor availability or other force majeure.

c. Fiber Optic Cable Regular Maintenance Schedule:

Section 1. Digital West shall perform daily monitoring of the Underground Service Alert System, Irthnet, via email alerts. Digital West, or its contractor, shall respond to all Underground Service Alert Tickets and place marks on Digital West leased conduit and Digital West fiber optic cable, as well as City conduit and City fiber optic cable (provided by Digital West) within 48 hours.

Section 2. Digital West, or its contractor, shall respond to all pole transfer work notifications through The NCJPA and make any necessary transfers of fiber optic cables within a reasonable amount of time.

Section 3. Digital West, or its contractor, shall perform a visual inspection on all aerial fiber and visible portions of the sub-structure quarterly for defects to strand, hardware, vault lids, manhole covers, and defects to fiber optic cable. Any defects shall be repaired or mitigated.

Section 4. Digital West, or its contractor, shall perform a semi-annual inspection of all underground vault locations and inspect for rodent activity, standing water, and
water migration into fiber optic cable and/or splice enclosure. Any defects shall be repaired or mitigated.

Section 5. Digital West shall monitor the network health and communication status in real time by use of network monitoring software and test "pings" to active devices on the network.

d. The Parties shall be responsible for performing, by themselves or with subcontractors reasonably acceptable to both Parties, all construction, maintenance and repairs as delineated above. Such maintenance and repairs shall be performed in a good and workmanlike manner in accordance with the National Electrical Safety Code, the National Electrical Code, applicable industry standards and regulations of applicable Governmental Authorities.

3. Maintenance Notification

All notices herein which are to be given or which may be given by either Party to the other, shall be in an email notice and, if necessary, by phone notification and addressed as follows:

To City: Email: Phone: 805.473.4368

To Digital West: Email: metrofiber@digitalwest.net Phone: 805.781.9378

Nothing herein contained shall preclude the giving of any such written notice by personal service, in which event notice shall be deemed given when actually received. The address to which notices shall be mailed as aforesaid to either Party may be changed by written notice given by such Party to the other as herein above provided.
## EXHIBIT C
### DIGITAL WEST MARKETING PLAN

<table>
<thead>
<tr>
<th>Est Date</th>
<th>Strategy</th>
<th>Who</th>
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<tbody>
<tr>
<td><strong>SHORT-TERM</strong></td>
<td></td>
<td></td>
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<tr>
<td>Early Oct</td>
<td>DW announces project on DW website, FB, Twitter, and in newsletter</td>
<td></td>
</tr>
<tr>
<td>Early Oct</td>
<td>DW provide language for GB to announce project on their website, FB, Twitter, SeaBreeze newsletter, etc.</td>
<td>GB distributes</td>
</tr>
<tr>
<td>Early Oct</td>
<td>DW develops language for the GB website (govt and chamber) describing fiber expansion project and benefits to businesses wanting to relocate there; include map of where fiber lies</td>
<td>GB adds to website</td>
</tr>
<tr>
<td>Early Oct</td>
<td>DW develops language for its website describing the GB fiber expansion project and benefits to businesses</td>
<td>Done</td>
</tr>
<tr>
<td><strong>Oct 2014 – Mar 2015</strong></td>
<td><strong>Estimated construction timeline</strong></td>
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<tr>
<td>Oct 6</td>
<td>Council expected to sign final agreement</td>
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<tr>
<td>Oct 6</td>
<td>Distribute Press Release; alert Stephen Nellis in advance</td>
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<tr>
<td>Late Oct</td>
<td>Implement DW Fiber Communications Plan (construction is coming; it’s here; sign up; etc.)</td>
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<tr>
<td>Winter 2014/2015</td>
<td>Tim speaks to GB/AG Chamber of Commerce about the project</td>
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<tr>
<td>Winter 2014/2015</td>
<td>Consider hosting a SoftTech meeting at the South County Regional Center or Brad Ford’s property</td>
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<tr>
<td>Winter 2014/2015</td>
<td>DW produces a 1-2 min video describing the GB fiber expansion project and benefits to businesses. To be hosted on GB and/or Chamber website. Consider including Paul Bischoff</td>
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<tr>
<td>Spring 2015</td>
<td>Postcard mailing to all relevant GB businesses letting them know fiber is coming. Plan ahead with budget, benefits of fiber speed</td>
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<tr>
<td>Summer 2015</td>
<td>Provide article for GB Chamber newsletter</td>
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<tr>
<td>Year</td>
<td>Description</td>
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<td>------------</td>
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<tr>
<td>Summer 2015</td>
<td>DW provides updates through its social media, website and newsletter on status of project</td>
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<tr>
<td>Summer/Fall 2015</td>
<td>Outreach to the National Conv &amp; Visitors Bureau Association, Destination Marketing Association and other national tourism/business groups, highlighting GB as a great place to do business. Suggested targets: Clovis/Fresno/Central Valley or LA, SF. The project should be well underway before we start doing national outreach. This timing may need to be adjusted.</td>
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<tr>
<td>Fall 2015</td>
<td>Email and/or postcard campaign to GB businesses (as applicable) to start using fiber</td>
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<tr>
<td>2016</td>
<td>A combination of updates, outreach to local businesses, and outreach to national outlets. Specifics TBD as we get closer to the time.</td>
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<tr>
<td>2017</td>
<td>A combination of updates, outreach to local businesses, and outreach to national outlets. Specifics TBD as we get closer to the time.</td>
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<tr>
<td>2018</td>
<td>A combination of updates, outreach to local businesses, and outreach to national outlets. Specifics TBD as we get closer to the time.</td>
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**Other Details**
- Objective: to get more entrepreneurs and/or small businesses into the vacant office space. 125 acres of space available for lease or purchase.
- Approach CalPoly entrepreneur program – Hot House satellite program in GB, possibly in Brad Ford’s Tech Center.
- Building entrance agreements need to be signed for rights to put connectivity into buildings.
- GB Seabreeze newsletter 3/x year
- Communications plan should talk about the Lodge and its capacity for conventions. Estimated completion: end of 2015.
- GB business rates extremely good (tentatively $100/month/building for 100 megs with ability to upgrade)
LETTER OF INTENT

September 23, 2014

Bob Perrault, City Manager
City of Grover Beach
154 S. 8th Street
Grover Beach, CA 93433

Dear Mr. Perrault:

It is the County of San Luis Obispo's intent to participate in the fiber optic cabling project under which the City is constructing a fiber optic cable infrastructure within the City of Grover Beach. Once the project is completed, a portion of the conduit will be made available to the County under a lease arrangement at no additional cost to the County.

The County understands that the cost for participation is the lesser of $268,000 or 34.23% of the $783,000 estimated total project cost, which includes engineering, environmental consultant, contractor, inspector of record, construction manager, all project permitting, approval and testing fees or other costs assessed by any federal, state or local agencies in connection with the project, and change order contingencies. If the lowest responsible bid for the construction phase of the project, excluding engineering and construction management costs exceeds $650,000, then the County is only responsible for its proportional share of the engineering costs, said proportionate share not to exceed $29,331, and, at its option, may proceed in the project.

It is understood that the County Board of Supervisor's approval is required before the County's Information Technology's participation in this project is confirmed. It is further understood that Paul Porter will be the ongoing County contact for this project. The parties agree that if they proceed with this project, they will work in good faith to enter into a more comprehensive Cost Sharing Agreement, which is subject to the County Board of Supervisor's approval, to set forth the parties rights, duties and obligations with respect to this project.

Sincerely,

Daniel Milei
Interim Director of Information Technology
San Luis Obispo County