STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: JAMES COPSEY, INTERIM CITY MANAGER

SUBJECT: CONSIDERATION OF A REVISED ENGINEERING AGREEMENT WITH DW INFRASTRUCTURE, INC., AUTHORIZATION TO PROCEED WITH THE BID FOR THE MUNICIPAL NETWORK PROJECT, AND AUTHORIZATION OF AN INTER-FUND LOAN BETWEEN THE WASTEWATER FUND AND THE GENERAL FUND TO FINANCE THE CITY'S PORTION OF THE PROJECT

BACKGROUND

The City of Grover Beach is working with Digital West Network, Inc. to implement the Municipal Broadband Network ("Network" or "Municipal Network"). Once completed, the Network will bring broadband service to key industrial and commercial areas of the City. The Network will be a backbone system with the capability of expanding throughout the City based on a demand and market for the services. In addition the County has indicated its interest in also partnering in the project to ensure the County offices located on Longbranch Avenue and South 16th Street are served by a fiber optic system. The combined project cost for the City and the County is estimated to be $825,598 with the City's share of the project is estimated to be $537,039 which includes the City's share of the Engineering and Design and the Construction Management and Administration. To date, the City has committed $85,689 of the estimated $537,039 (leaving a remaining balance of $451,350) to Digital West Network, Inc. for the engineering and design services for the Municipal Broadband Network. Staff expects to fund $51,413 from the FY16 Budget for the first 3 parts of the completed design and $34,276 from FY17 Budget for the remaining two parts.

In order to move forward with the implementation of the Municipal Broadband Network, staff is recommending the Council authorize a revision to the engineering and design agreement with DW Infrastructure, Inc., authorize an inter-fund loan between the City's Wastewater Fund and the City's General Fund to finance the City's participation in the project, and authorize staff to initiate the construction bid process for the Municipal Broadband Network.

DISCUSSION

DW Infrastructure, Inc. will be responsible for completing the design and engineering for the backbone of the Municipal Network project. In fact, the Council authorized the City to enter into an agreement with Digital West Networks, Inc. in October of 2014 to perform these services, but the agreement was never formally finalized. Digital West Networks, Inc., however, continued to

APPROVED FOR FORWARDING

JAMES COPSEY
INTERIM CITY MANAGER

Meeting Date: May 16, 2016
work on the engineering and design of the Municipal Network project and they are just about complete. Digital West Network, Inc. is requesting a revision to the agreement to revise its corporate name from Digital West Networks Inc. to DW Infrastructure, Inc. (Attachment 2).

The design work being completed by DW Infrastructure, Inc. will include biddable plans and specifications for the conduit for the publicly owned portion of the project. Attached as Exhibit A to the Engineering and Design Agreement is a diagram of the Network routing including installation locations for both conduit and aerial fiber. The City will conduct a public bid and award process to secure a contractor to install the conduit and necessary infrastructure. Once the final construction costs are obtained, staff will again return to Council for authorization to continue with the construction bid award. During the Construction phase, it is envisioned that DW Infrastructure Inc. will provide Construction Management services on behalf of the City, however, this agreement will be finalized later. 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 conduit lease agreement with Digital West Network, Inc. for the use of the conduit to operate the network. The lease agreement will contain provisions for both the operation and marketing of the system. As a part of the lease agreement, DW Infrastructure Inc. will install and maintain the fiber at its cost and provide the City access to the fiber for public purposes. The City will also receive an Annual Recurring Charge of 5.1% of the gross revenue generated by Digital West’s operation of the system. The forecasted revenue amount speculated by Digital West Network, Inc. for the City is estimated to grow from a first year projection of $4,437 to $112,302 in year 10, for a total over the 10 years of $602,285. This amount is much higher than the originally predicted 10 year projection of $32,038 per year represented by Digital West Network, Inc. in 2014. The increase projections are due to the fact that they plan to add the residential market to our options which is projected to fall under the lease agreement. This brings greater benefit to the community, as well as more revenue commission to the City.

As noted, the Council has authorized the City to enter into an agreement with Digital West Network, Inc. for design and engineering services and staff is recommending a minor revision to this agreement. Digital West Network, Inc. had to have a General Contractors license in order to perform the engineering and construction work. That license was secured and put into their DW Infrastructure, Inc. company, which will be the one providing the engineering and project management work. The engineering work, which once completed will cost $85,589, was approved in the original agreement by Council on November 17, 2014 but was never signed by Digital West. The amount is to be paid upon completion of five parts of the engineering agreement. Those include: Part 1, Schematic Design; Part 2, Design Development; Part 3, Construction Document; Part 4, Bidding; and Part 5, Construction. To date, the first three parts have been completed as Digital West Network, Inc. continued to work on the designs. The final conduit lease agreement will be through the service provider company, Digital West Networks, Inc. It is staff’s intent to return back to the Council for final authorization once the bidding process is complete. Staff will also return to Council with the Construction Management and Conduit Lease agreements, the completed California Environmental Quality Act (CEQA) environmental documents, and further determination of the actual construction costs once known. This approach will provide the Council the option to decide whether to proceed further with the project in the event costs for the project exceed available resources.

Based on the most recent engineering estimate for the Network provided by Digital West Network, Inc., the City’s and the County’s costs for the infrastructure portion of the project will be $825,599. Costs are allocated to the participating parties in the following manner:
In September 2015, the County Board of Supervisors authorized the County’s participation in the project with a letter of intent. County participation is to cover the costs of conduit installation that would serve the County offices located in Grover Beach on South 16th Street and Longbranch Avenue. Ultimate participation by the County is dependent on the final construction bid costs and the development and approval of a Costs Sharing Agreement between the City and the County. (The Cost Sharing Agreement is yet to be developed.)

One option for the City is to fund its share of the construction of infrastructure project costs along with the Construction Management costs with an inter-fund loan between the Wastewater Fund reserves and the General Fund. (Attachment 1). The recommended inter-fund loan would not exceed $452,000. The suggested terms of the loan would include a five-year repayment period, fully amortized at 2% per year. This would be viewed as an investment by the Wastewater Fund and the interest amount received would be equal to or better than the interest earned by reserve funds posted with the Local Agency Investment Funds. The debt service payments would amount to $95,896 per year and would be payable from General Fund Revenues over five (5) years. In 2014, the estimated debt service was predicted to be $44,000 based upon a 15-year $500,000 inter-fund loan. However, it is not recommended to carry the inter-fund loan more than five (5) years. A second option would be to fund this next stage of the project directly from the General Fund or Reserves.

The Plans and specifications have now been completed and are available for the Council’s review in the Public Works Director/City Engineer’s Office during regular business hours. Staff is recommending the Council authorize the project to go out to construction bid. Once released for bid, the bid period will take approximately 60 days to complete.

Should Council approve the updated engineering and design agreement with DW Infrastructure, Inc., staff will move forward with the Request for Proposal for the construction bids. In conjunction with the bid process, staff or a consultant will prepare the Initial Study and likely a Mitigated Negative Declaration in compliance with CEQA environmental documents. Once both are complete, staff will return back to Council for final approval of the project, with the construction management and conduit lease agreements with Digital West Network Inc., as well as the cost sharing agreement with the County. The Council could also adopt the Resolution approving the inter-fund loan agreement between the Wastewater Fund and the General Fund in preparation of moving forward with this project. Or, the Council could wait to adopt the Resolution approving the inter-fund loan agreement between the Wastewater Fund and the General Fund until the final costs are known.

**ALTERNATIVES**

The Council has the following alternatives to consider:

1. The Council could approve the revised Engineering and Design Agreement with DW Infrastructure, Inc. and authorize the Mayor to sign the agreement on behalf of the City, authorize the initiation of the construction bid process and the CEQA process for the Municipal Broadband Network project, and adopt the Resolution approving the inter-fund loan agreement between the Wastewater Fund and the General Fund.
2. The Council could approve the revised Engineering and Design Agreement with DW Infrastructure, Inc. and authorize the Mayor to sign the agreement on behalf of the City, authorize the initiation of the construction bid process and the CEQA process for the Municipal Broadband Network project, and not adopt the Resolution approving the inter-fund loan agreement between the Wastewater Fund and the General Fund.

3. Take no action at this time; or

4. Provide staff with additional direction.

**RECOMMENDED ACTION:**

It is recommended the Council: 1) approve the revised Engineering and Design Agreement with DW Infrastructure Inc. and authorize the Mayor to sign the agreement on behalf of the City; 2) authorize the initiation of the construction bid and CEQA processes for the Municipal Broadband Network; and 3) adopt the Resolution approving the inter-fund loan agreement between the Wastewater Fund and the General Fund.

**FISCAL IMPACT:**

To date, the City has committed $85,689 to Digital West Network, Inc. for the engineering and design services for the Municipal Broadband Network. Staff expects to fund $51,413 from the FY16 Budget for the first 3 parts of the completed design and $34,276 from FY17 Budget for the remaining two parts. Approval of this item will initiate an inter-fund loan of up to $452,000 of the remaining amount of financing needed between the Wastewater Fund and the General Fund for the implementation of the Municipal Broadband Network. The loan will be repaid over a five-year period at an annual debt service amount of approximately $95,896. Digital West Network, Inc. will pay to the City an Annual Recurring Charge of 5.1% of gross revenues generated by the Network. The actual annual amount of revenue to be derived from the Annual Recurring Charge is unknown at this time but it is estimated to grow from $4,437 in the first year to $112,302 in year 10, for a total over the first 10 years of $602,285.

**PUBLIC NOTIFICATION:**

The agenda was posted accordance with the Brown Act.

**Attachments:**

1) Draft Resolution Authorizing an Inter-Fund Loan between the Wastewater Fund and the General Fund to finance the Implementation of the Broadband Municipal Network.

2) Draft Revised Engineering and Design Agreement between the City of Grover Beach and DW Infrastructure Inc. with exhibits.
RESOLUTION NO.____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GROVER BEACH AUTHORIZING A LOAN FROM THE WASTEWATER FUND TO THE CITY'S GENERAL FUND

WHEREAS, the City of Grover Beach is working with Digital West Network, Inc. and DW Infrastructure, Inc. to implement the Municipal Broadband Network ("Network") to bring broadband service to key industrial, commercial, and residential areas of the City; and

WHEREAS, the project consists of designing and installing fiber optic conduit and fiber cable in the City’s streets for the installation of the Network; and

WHEREAS, the Council has authorized DW Infrastructure, Inc. to perform the engineering and design for the Network and the City will conduct a public bid and secure a contractor to install the conduit and necessary infrastructure for the Network; and

WHEREAS, the County of San Luis Obispo Board of Supervisors intends to participate in the installation of and share in the costs of the Network to service County facilities; and

WHEREAS, the City’s remaining portion of the costs of the project will be approximately $451,350; and

WHEREAS, the funding for the City’s cost is needed in the General Fund in order to cover the City’s share of the construction costs to install the Network; and

WHEREAS, it has been determined that a loan from the Wastewater Fund to the General Fund is the most cost effective alternative to address the current funding needs on a temporary basis.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the City Council of the City of Grover Beach hereby authorizes a loan of up to four hundred and fifty two thousand dollars ($452,000) from the City of Grover Beach Wastewater Fund to the City of Grover Beach General Fund for a period not to exceed five (5) years at an interest rate of 2% to be charged annually and said loan shall be fully repaid prior to when said funds are needed to construct capital improvements and other expenses related to the operation of the City of Grover Beach wastewater system.

Upon motion by__________, second by ____________, and on the following roll-call vote, to wit

AYES: Council Members -
NOES: Council Members -
ABSENT: Council Members -
ABSTAIN: Council Members –
The forgoing Resolution was PASSED, APPROVED, and ADOPTED at a regular meeting of
the City Council of the City of Grover Beach, California this 16th day of May, 2016.

Attest:

DONNA L. McMAHON, CITY CLERK
AGREEMENT
CITY OF GROVER BEACH, CALIFORNIA
CONSULTANT SERVICES
ENGINEERING AND DESIGN

THIS AGREEMENT is made and entered into effective the ____ day of ________, 2016, by and between the CITY OF GROVER BEACH, a California municipal corporation (hereinafter referred to as "CITY"), and DW Infrastructure, 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 designing and building IT infrastructure ultra-high speed fiber optic internet and carrier transport services 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 CITY'S Public Works 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 costs for review and acceptance by CITY. As used herein, "construction cost" means the cost of construction under the general construction contract includes 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 ninety (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-submitals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within fourteen (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 ninety (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-submitals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY
within fourteen (14) calendar days from receipt of CITY’S comments unless an extension of time is approved in writing by the Director.

(c) **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 a set of completed plans and a set 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 (1) 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 ninety (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. Resubmittals, as necessary to obtain the acceptance by CITY, shall be submitted to CITY within fourteen (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 seven (7) calendar days of any request by CITY, expeditiously draft and promptly provide an 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 ten percent (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 ninety (90) calendar days of any request by CITY, revise the plans and specifications as may be necessary to stay within ten percent (10%) of such final estimate of construction cost, at no additional cost to CITY provided such bid is received within one hundred eighty (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 ten percent (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. Upon the award of construction, the winning bidder will provide the construction timeline. 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 ninety (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 fourteen (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 complete requirements 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 and approve all change orders during construction in cooperation with CONSULTANT.
(c) Prepare and approve 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.


(a) CONSULTANT’S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee of Eighty Five Thousand, Six Hundred and Eighty Nine Dollars ($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.

(b) 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.

(c) 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 – twenty percent (20%), Part 2 – twenty percent (20%), Part 3 – twenty percent (20%), Part 4 - twenty percent (20%), and Part 5 - twenty percent (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.

(d) 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).

(e) 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.

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

(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) seven (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.

(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. 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.

4. 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 ninety (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 4.

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

5. 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.

6. 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 wilful 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.
7. **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.

(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 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) 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.
8. 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 8 in each subcontract and require its subcontractors to comply therewith.

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

10. 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 10.

11. 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.

12. 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.

13. 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.


(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.

15. 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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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.

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

23. **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.

24. **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.

25. **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.

26. 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.

[ signatures on following page ]
CITY GROVER BEACH,
a California municipal corporation

By: __________________________
    John P. Shoals
    Mayor

Attest:

________________________________________
Donna L. McMahon
City Clerk

DW Infrastructure, Inc.,
a California Corporation

By: __________________________
    Name: _______ Tim Williams
    Title: _______ CEO

APPROVED AS TO FORM:

________________________________________
David P. Hale
Assistant City Attorney

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. These 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.) and obtain permits for all pertinent agencies other than City;
- Prepare construction drawings in AutoCAD or ArcGIS format for Bid/Construction;
- Prepare materials for 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.

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 on pages 4 and 5 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 Avenue to the south side of Newport Avenue along the west side of Front Street. Portion: 819 feet of three separate 1.25 inch 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 Avenue to the north side of Ramona Avenue along the west side of Front Street. The design will include three separate (new) 1.25 inch inner-duct conduit being placed in the existing 4 inch 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 inch 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 Avenue 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 Avenue. Engineering services shall include all design for construction and installation of this underground portion: 1,690 feet of five separate 1.25 inch conduits (new) for a total 8,450 feet linear feet of conduit.
Exhibit A  
Page 2 of 3

- **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 Avenue and South 4th Street, to the northwest corner of South 4th Street and Farrell Road along the west side of South 4th Street. Engineering services shall include all design for construction and installation of this underground portion: 2,190 feet of five separate 1.25 inch 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 Avenue and South 4th Street to the northwest corner of South 16th Street and Longbranch Avenue, along the north side of Rockaway Avenue and the north side of Longbranch Avenue. Engineering services shall include all design for construction and installation of this underground portion: 4,820 feet of five separate 1.25 inch 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 Avenue along the west side of South 7th Street 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 South 11th Street and Rockaway Avenue along the west side of South 11th Street to the southwest corner of West Grand Avenue and South 11th Street. Engineering services shall include all design for construction and installation of this underground portion: 330 feet of five separate 1.25 inch 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 South 13th Street and Longbranch Avenue along the west side of South 13th Street to the southwest corner of West Grand Avenue and South 13th Street. Engineering services shall include all design for construction and installation of this underground portion: 696 feet of five separate 1.25 inch 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 South 16th Street and Longbranch Avenue along the west side of South 16th Street to the southwest corner of West Grand Avenue and South 16th Street. Engineering services shall include all design for construction and installation of this underground portion: 680 feet of five separate 1.25 inch conduit (new) for a total 3,400 linear feet of conduit.

- **Section 6I** of Drawing 2 of 2, of Exhibit A, is a proposed trench/bore and conduit placement on the west side of Huber Street, from a point approximately 560 feet south of Farrell Road south to 948 Huber Street (Pacific Crossing Building). Engineering services shall include all design for construction and installation of this underground portion: 380 feet of three separate 1.25 inch 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 the northeast corner of Griffin Street and Farroll Road along the east side of Griffin Street, approximately, 430 feet south of Farroll Road. Engineering services shall include all design for construction and installation of this underground portion: 430 feet of three separate 1.25 inch 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 Street approximately, 430 feet south of Farroll Road along the east side of Griffin Street to an existing riser pole on the southeast corner of Griffin Street and Highland Way. Engineering services shall include all design for construction and installation of this underground portion: two separate 1.25 inch conduit (new) for a total 760 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 Road and Huston Street, along the east side of Huston Street to an existing riser pole on the southeast corner of Huston Street and Highland Way. Engineering services shall include all design for construction and installation of this underground portion: two separate 1.25 inch conduit (new) for a total 860 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 $2,000,000 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.
# Exhibit C

## 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:**

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**Signature**

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**Date**

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__________________________

**(name)**

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__________________________

**(company)**

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__________________________
__________________________

**(address)**

__________________________

**Additional page(s) attached.**

__________________________
__________________________

**(city state zip)**

Page 1 of 1
Recommended Actions:

- Receive public input
- Approve Revised Engineering and Design Agreement
- Authorize initiation of Construction Bid
- Authorize Inter-Fund Loan
Digital West Broadband Network

Update:

- **February 2010** - City Council approved a Technology Master Plan
- City Began Exploring Feasibility of Broadband
- **2011** - City moved ahead with a Public/Private Partnership with Digital West

*Continued...*
Update:
Continued…

- **2012** - Discussions with Digital West for Installation of Fiber
- **2013** - Coordination with Digital West and San Luis Obispo County as Partner
- **2014** - Final Concept Plans drawn up and initial Engineering Agreement approved
- **2015/16** - Engineering and Design Plans by Digital West Near Completion
Digital West Broadband Network

Moving Forward:

- Complete **Engineering and Design**
- Go out to bid to determine construction costs
- Complete **Construction Agreement**
- Complete **Lease Agreement** with Digital West
- Complete **Cost Sharing Agreement** with County of San Luis Obispo
- Move forward and complete the project!
Digital West Broadband Network

Expected Costs:

- Engineering and Design = $85,689
  3 of the 5 phases now completed

- Construction of Infrastructure
  City Share = $537,040
  County Share = $288,559
Recommended Actions:

- Receive public input
- Approve Revised Engineering and Design Agreement
- Authorize initiation of Construction Bid
- Authorize Inter-Fund Loan
Digital West Broadband Network

Questions or Comments?