

## CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is made by and between City of Grand Junction with offices for transaction of business located at 250 North 5<sup>th</sup> Street, Grand Junction, Colorado 81501 ("Customer"), and NEO Fiber, with offices for transaction of business located at PO Box 2664, Glenwood Springs, Colorado 81602 ("NEO").

### Recitals

Customer hereby engages NEO to provide certain professional consulting services ("Services") as set forth in supplemental written instructions issued by Customer to NEO and signed on behalf of both parties by their authorized representatives describing in detail, among other things, the description and/or specifications of the Services to be performed ("Task Order(s)"). Each Task Order shall be supplemental to this Agreement and the first shall be designated "Task Order One," and successive Task Orders shall be similarly identified in numerical order; and,

NEO accepts such appointment and agrees to perform the Services described herein and in each Task Order(s).

### Agreement

In consideration of the promises and covenants contained herein, Customer and NEO agree to the accuracy of the above recitals and further agree as follows:

1. **Term.**

1.1. This Agreement shall remain in effect for twenty-four months commencing September 9, 2015, unless sooner terminated as allowed herein. The parties may extend the term of this Agreement by mutual agreement signed by both parties.

1.2. NEO will complete the Services by the completion date(s) set forth in individual Task Orders issued by Customer, unless sooner terminated as allowed herein.

**TERMINATION.** Each party shall have the right for its convenience to terminate this Agreement by giving the other party written notice at least thirty (30) days prior to the effective date of termination. Any notice given by Customer shall specify the extent to which this Agreement terminated and the nature and scope of Services, if any, NEO shall continue to perform until the effective date of termination. Upon termination of this Agreement, Customer shall pay all remaining fees for actual hours spent under each respective Task Order, with thirty (30) days of termination notice. Termination of the Agreement does not allow the Customer to waive its obligation of paying respective fees outlined in each Task Order for hours worked. If a Task Order's service fees are not based upon an hourly rate, the respective fees in the event of termination will be outlined in that specific Task Order.

### SERVICE FEE, EXPENSES AND PAYMENT.

1.3. As consideration for NEO's performance of Services in accordance with the specification for Services set forth in this Agreement, Customer shall pay NEO the amount(s) specified in individual Task Order(s). If the Scope of Work changes in the specified Task Order(s), NEO and Customer will discuss

and amend the Scope of Work to include such changes. In addition, if specified in the applicable Task Order(s), NEO shall be reimbursed for reasonable expenses actually and necessarily incurred at the direction of the Customer. The reimbursement of such expenses shall be in accordance with the standard expense reimbursement policy of Customer.

1.4. NEO shall issue invoices following the delivery or completion of Services rendered or monthly for Services provided on an ongoing basis. Invoices will contain an itemized description of all expenses, charges, costs, Service descriptions, and all state, federal, sales or other applicable taxes separately. All undisputed invoices will be paid within thirty (30) days of receipt. Payment shall not constitute acceptance or approval of Services or a waiver by Customer of any right.

1.5. NEO shall maintain complete and accurate records of all amounts billable to and payments made by Customer hereunder in accordance with recognized accounting practices. NEO shall retain such records for a period of four (4) years from the date of final payment for Services. During the term of this Agreement and the respective periods in which NEO is required to maintain such records, Customer and its authorized agents and representatives shall have access to such records for purposes of audit during NEO's normal business hours and upon reasonable written notice.

2. **INDEPENDENT CONTRACTOR.** NEO hereby declares and agrees that it is engaged in an independent business and will perform its obligations under this Agreement as an independent contractor and not as the agent or employee of Customer; that NEO will be solely responsible for all matters relating to payment of social security, withholding and all other federal, state and local laws, rules and regulations governing such matters; and that NEO will be responsible for NEO's own acts during the performance of NEO's obligations under this Agreement.

3. **SOLICITATION OF EMPLOYEES.** Customer agrees that throughout the period during which NEO is working on Customer's behalf and for one year thereafter, Customer will not offer employment to any of NEO's employees or affiliate staff without NEO's prior written consent.

4. **OWNERSHIP.** All technical or business information, in whatever medium or format, including but not limited to, data, specifications, processes, drawings, records, reports, proposals, and related documentation, research, or other information, originated or prepared by or for NEO in contemplation of, or in the course of, or as a result of, work performed hereunder ("Prepared Information"), shall be promptly furnished to Customer, and is owned by the Customer. Prepared Information specifically excludes NEO's preexisting works and/or Prepared Information developed by NEO or acquired by NEO that was not specifically developed for Customer. Customer is hereby entitled to use said information as deemed necessary for its purposes including the possibility of assigning said information to any companies related to the Customer.

5. **CONFIDENTIAL AND PROPRIETARY INFORMATION.**

5.1. During the term of this Agreement, NEO and Customer may receive confidential and proprietary information ("Proprietary Information") belonging to the other or third parties. Proprietary Information may include but is not limited to Customer's plans, strategies, processes, ideas, concepts, materials, processes, techniques, software programs, the concepts contained in such programs, documentation, test results, third party financial information and business or technical plans. Information which: (i) is in the public domain through no act or omission of the receiving party; (ii) was in the receiving parties lawful possession without limitation on disclosure; (iii) is hereafter disclosed lawfully to the receiving party

without limitation on disclosure; or (iv) if independently developed by the receiving party shall not constitute Proprietary Information.

5.2. NEO and Customer agree to hold Proprietary Information in strict confidence and shall not make such Proprietary Information available to any third party, except Customer's financial and legal advisors, in any form during the term of this Agreement or any time after termination or expiration hereof. Each party shall only duplicate Proprietary Information as necessary to perform their respective obligation under this Agreement.

6. **INSURANCE.** NEO shall carry Commercial General Liability Insurance with a minimum coverage of \$1,000,000 per occurrence and \$2,000,000 in annual aggregate and Professional Liability Insurance with a minimum of \$1,000,000 per claim and \$2,000,000 in annual aggregate. NEO shall carry Standard Workers' Compensation Insurance as required by law.

7. **PROPERTY DAMAGE: LIMITATION OF LIABILITY.** Each party will be responsible for any actual, physical damages it directly causes which results in property damages or personal injury, including death in the course of its performance under this Agreement.

8. **DISPUTE RESOLUTION.** Any claim, controversy, or dispute between the Parties, their Affiliates, their approved assignees, agents, employees, officers, or directors ("Dispute") shall be resolved by arbitration conducted by a single arbitrator engaged in the practice of law and familiar with the subject matter of the Dispute, under the then current rules of the American Arbitration Association ("AAA"). The Federal Arbitration Act, 9 U.S.C. §§. 1-16, not state law, shall govern the arbitrability of all Disputes. The arbitrator shall have authority to award injunctive relief and/or compensatory damages only, as allowed herein. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. The prevailing Party, as determined by the arbitrator, shall be entitled to an award of reasonable attorneys' fees and costs. The arbitration shall occur in the City and State of the Party against whom the arbitration is brought, and the laws of such state shall govern the construction and interpretation of the Agreement. It is expressly agreed that the arbitrator shall be authorized to issue injunctive relief pending a final arbitration decision and either Party may seek relief in an appropriate court of law to enforce such determination by an arbitrator. Either Party may seek a temporary restraining order from an appropriate court of law for a period of time needed for the designation of an arbitrator and the arbitrator's assuming responsibility for the Dispute including whether to issue injunctive relief pending a final arbitration decision.

9. **COMPLIANCE WITH LAWS.** Each party shall comply, at its own expense, with the provisions of all federal, state and local laws, regulations, ordinances, requirements and codes that are applicable to the performance of the Services hereunder, including the environmental regulations applicable to the Site, as well as the Customer's policies on social matters and corporate image.

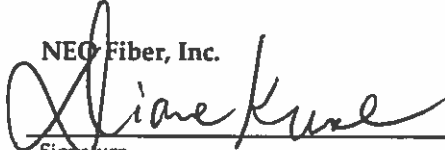
10. **ASSIGNMENT.** Any assignment or delegation of the rights or obligations hereunder, in whole or in part or any other interest hereunder, without Customer's written consent, shall be void. Customer reserves the right to assign this Agreement to any parent, subsidiary, affiliate, or successor Customer of Customer.

11. **NOTICES.** For purposes of communication, approval, or authorization concerning any matter pursuant to this Agreement, all communications shall be in writing, or if oral shall be reduced to writing, and made by U.S. Mail or other delivery service, facsimile, or personal service to the address noted above. Either party may change its address by giving written notice to the other party.

12. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement and supersedes any and all prior agreements, written or oral, between the parties with respect to the Services set forth herein. Neither party shall be bound by, and each party specifically objects to, any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is proffered by the other party in any correspondence or other document, unless the party to be bound thereby specifically agrees to such provision in writing.

The parties intending to be legally bound have caused this NEO Agreement to be executed on the date(s) set forth below.

NEO Fiber, Inc.



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Signature

Diane Kruse

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Name Typed or Printed

CEO

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Title

9/8/2015

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Date

City of Grand Junction



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Signature

Scott Hockins

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Name Typed or Printed

Special Projects Manager

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Title

September 8, 2015

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Date

**TASK ORDER ONE  
Consulting Services, Broadband Planning**

This Task Order One is issued pursuant to the terms and conditions of that certain NEO Agreement between City of Grand Junction ("Customer") and NEO Fiber, ("NEO") dated approximately September 8, 2015 (the "Agreement").

**1. SERVICE DESCRIPTION, LOCATION(S) AND FEE(S).**

1.1. This Task Order One shall be effective on September 8, 2015 and shall be completed no later than (240) days from the time contract is signed (the "Task Order Term"). Each party shall have the right for its convenience to terminate this Task Order One, during the Task Order Term, or any extension thereof, by giving the other party written notice of termination. Any notice of termination given by Customer shall specify the extent to which this Task Order One is terminated and the nature and scope of the services, if any, NEO shall continue to perform until the effective date of termination.

1.2. The services NEO shall provide are generally described as providing general consulting services for community broadband planning services.

Specifically the Scope of Work to be provided by NEO is:

**1. Broadband Friendly Policies and Codes:**

- a. Provide broadband friendly policy/code recommendations for the City of Grand Junction to consider.
- b. Provide examples of other municipalities that have adopted broadband friendly policies and codes.

**2. Needs Assessment, Market Analysis and Business Planning:**

- a. Conduct a business and technical assessment of existing broadband and telecommunications services.
- b. With input from local partners, develop a communications and outreach strategy, and conduct outreach to existing businesses to assess market needs and future demand for high-speed internet access.

**3. Stakeholder Support**

- a. Identify and consult with city community leaders and citizens to build understanding of and support for the broadband economic development project.
- b. Coordinate with Mesa and Garfield County staff members and consultants on the Mesa/Garfield Counties' regional broadband study. Coordinate and communicate strategies of the Counties' regional broadband study with the efforts of the City of Grand Junction's city-based broadband plan.

**4. Preliminary Design and Engineering**

- a. Analyze the current broadband capability and service relationships.
- b. Design a broadband delivery system to address the current and future needs of Grand Junction and the surrounding region.
- c. Conduct a preliminary engineering analysis to determine the methods and costs most appropriate for delivering the desired broadband services.

5. Development of Business Model

- a. Based upon technical and market analyses, evaluate potential business models for build-out and operation of expanded regional broadband services.
- b. Analyze potential public/private partnerships and public options, highlighting the City of Grand Junction's preference for a public/private partnership rather than offering services directly on a retail basis or as a typical enterprise.

6. Financial Planning and Funds Sourcing:

- a. Develop a financial plan for the identified broadband infrastructure plan.
- b. Work with the City of Grand Junction to identify funding opportunities to implement the broadband design.

**Below are a Detailed Work Plan and Timeframes**

The entire project is projected to be completed within 6-8 months. Below are a detailed timeline, work plan and approach, as well as the specific deliverables for each task.

1. Broadband Friendly Policies and Codes:

- a. Provide broadband friendly policy/code recommendations for the City of Grand Junction to consider.
- b. Provide examples of other municipalities that have adopted broadband friendly policies and codes.

Before we begin the Needs Assessment, Market Analysis and Business Plan, we will meet with you to further define the mission, value and goals of the project. In this meeting and in collaboration with the City of Grand Junction staff and the broadband committee, we will specifically identify the components of the implementation plan document. In our planning session, we will also identify and recommend key stakeholders that shall participate in the process and map out and assign dates to all of the required meetings, workshops, and tasks necessary to complete the plan document.

At the beginning of this meeting, we will provide a list of broadband friendly policies and codes with examples of other municipalities that have adopted these policies and codes.

Also during this initial meeting, we will develop a communications and outreach strategy with specific talking points to be discussed, information that needs to be gathered and a list of businesses and shareholders to be included.

Deliverable: Broadband friendly policies and codes and examples. Work Plan, timelines, list of contacts of shareholders and businesses, talking points and agendas for the meetings with stakeholders.

2. Needs Assessment, Market Analysis and Business Planning: Weeks 1 - 3

- a. Conduct a business and technical assessment of existing broadband and telecommunications services.
- b. With input from local partners, develop a communications and outreach strategy, and conduct outreach to existing businesses to assess market needs and future demand for high-speed internet access.

We believe strongly in collaborative approach to broadband planning. In our experience, bringing stakeholders, providers, and key users together as part of the planning process is of utmost importance to long term success. These people may not want to be at the same meeting together; however, it is crucial that we get them to the table. We often recommend having separate meetings for the fiber owners, providers and asset owners and then have industry segment meetings for the medical, educational, government and business community. There are often great synergies amongst the various industry segments and many times these entities need to communicate with each other and need fiber or communication assess between them. For example, the medical clinics need to be tied into the hospital's network or the schools want connectivity between the various community college locations.

We will schedule extensive discussion and dialogue with key users in the community, businesses, network asset owners, vendors and service providers. These meetings are usually conducted on-site, at a town hall or community meeting room, and a detailed agenda is developed by NEO prior to each meeting. We believe good relationships with community leaders are essential as well as excellent communications with asset owners, private fiber networks, and providers. We will make every effort to represent you well in all of our communication with stakeholders.

Deliverable: Initial Map of existing stakeholder and anchor tenant locations, Map of existing fiber, conduit and other assets that may exist within the community,

### 3. Stakeholder Support (Weeks 4-6)

- a. Identify and consult with city community leaders and citizens to build understanding of and support for the broadband economic development project.
- b. Coordinate with Mesa and Garfield County staff members and consultants on the Mesa/Garfield Counties' regional broadband study. Coordinate and communicate strategies of the Counties' regional broadband study with the efforts of the City of Grand Junction's city-based broadband plan.

While we are conducting on-site stakeholder meetings with anchor institutions and service providers, we will also schedule meetings with the participating jurisdictions and the Colorado State Office of Information Technology to collect, verify and compile data. Additionally, we will meet with CDOT, the various towns and county governments, the local transit authorities, the power and energy companies, the cellular companies, EAGLE-net and any other entities that might have conduit, right of way, easements, pole attachments, fiber, towers or other assets.

Deliverable: Meetings with regional community leaders and citizens to build understanding and support. Final draft of maps of existing stakeholder and anchor tenant locations, map of existing fiber, conduit and other assets

### 4. Design and Engineering, Weeks 7 – 20 (The timeline may be able to be condensed):

Analyze the current broadband capability and service relationships.

- a. Design a broadband delivery system to address the current and future needs of Grand Junction and the surrounding region.
- b. Conduct a preliminary engineering analysis to determine the methods and costs most appropriate for delivering the desired broadband services.

From these stakeholder meetings, NEO will provide its support and expertise to define, identify, map,

characterize, and report on the opportunities and challenges presented by a variety of last mile network options, including input from multiple stakeholders and other relevant data sources; and will provide support and expertise in designing, developing and delivering of complex networking solutions; including providing advice on relevant trends and best practices on last mile broadband approaches and models.

After assessing the potential gaps and markets, we will meet with and discuss our findings regarding potential plans to fill the needs and gaps, with cost estimates for various methods of connectivity.

We will design a broadband delivery system that leverages the existing fiber and conduit assets in place and addresses both the current and future needs of Grand Junction. The preliminary engineering analysis will provide estimated projected capital costs for building or acquiring fiber and/or wireless connectivity. We will also identify and provide methods for construction and delivery of services.

Deliverable: Preliminary design of network maps using GIS-based mapping software. Projected capital costs and write-up of methods for construction and delivery of service options.

#### 5. Development of Business Model (Weeks 21 – 22)

- a. Based upon technical and market analyses, evaluate potential business models for build-out and operation of expanded broadband services for the City of Grand Junction.
- b. Analyze potential public/private partnerships and public options, highlighting the City of Grand Junction's preference for a public/private partnership or a public/public partnership rather than offering services directly on a retail basis or as a typical enterprise.

We will provide an analysis and summary various ownership models and public/private partnerships and public options. This will include the potential business models for build-out and operation of the expanded broadband services.

Deliverable: Pros and cons of various ownership models and options for consideration regarding business models, public/private partnerships and public options.

We would recommend reviewing the plan draft and cost estimates with The City of Grand Junction staff and the broadband committee to provide feedback on the options available.

#### 6. Financial Planning and Funds Sourcing, Weeks 22 - 24:

- a. Develop a financial plan for the identified broadband infrastructure plan.
- b. Work with the City of Grand Junction to identify funding opportunities to implement the broadband design.

Based upon feedback on the options available, various ownership model considerations and the models available for service delivery, our team will put together a financial plan for the identified broadband infrastructure plan. Our financial tools and approach involve objective, fact-based research and financial analysis that can easily be shaped and modified to obtain sensitivity analysis with various assumptions. These tools will assist the City of Grand Junction on its strategy in forming public/private partnerships, expansion assumptions, positioning strategies and overall execution of the go-forward plan.

The financial plan will be developed with our design and engineering team that will look at the existing



infrastructure available, the needs of key community stakeholders and anchor tenants, broadband needs and future plans, and capital costs based upon a preliminary design of the network.

Based upon our finding of funding resources and available financing/funding programs, we will identify and propose prioritization and timing of various projects and needs. For example, there are grants that are specifically related to the healthcare industry and depending upon timing of these grant programs, this may influence the prioritization of the construction of projects for the healthcare anchor institutions. Also, the healthcare anchor institutions may have already budgeted a network build and is committed to the project with or without regional support. This build perhaps would then facilitate collaboration with other anchor institutions located close-by. These opportunities for collaboration, joint builds, grants, etc. will be identified during our process and will influence the prioritization of the project/needs.

We will outline possible financing options to consider. We will provide numerous options for consideration including strategic partnerships, specific targeted investments, financing and contracting models and public/private partnerships.

**Deliverable:** After the initial draft of the master plan is provided and feedback is obtained, we will compile and deliver a final written master plan and various financial models, addressing sustainability, scalability, maintenance and other business planning considerations. All maps and specific location data will be GIS compatible and in the format required by the City of Grand Junction. The master plan will also provide a list of Funding Resources and Priorities.

Additionally, NEO will provide general consulting services as directed by Customer.

1.3. NEO will be paid by Customer an hourly rate of \$150 (One hundred and fifty dollars) per hour, plus travel expenses as provided for herein. The total hourly fees and expenses for this Task Order One will not exceed \$83,000 without the prior written consent of the Customer.

#### 1.4. SERVICE SPECIFICATIONS, REQUIREMENTS AND DELIVERABLES.

During the term of this Agreement, NEO shall, at the direction of Customer Representative, use their best professional skills, expertise and experience to perform Services.

The nature and scope of the Services associated with this Agreement and the Services will necessitate timely communication to Customer Representative of NEO's findings. Therefore, it will not be possible for all of NEO to be in the form of written reports that detail the nature of NEO's professional Service rendered.

## 2. PERFORMANCE STANDARDS.

NEO agrees to perform the Services with care, skill, and diligence, and shall be responsible for the quality, technical accuracy, completeness, and coordination of all reports, information, specifications, and other items and services furnished under this Agreement. NEO shall comply with all applicable governmental laws, ordinances, codes, and regulations in performing the Services.

The details of said performance shall be detailed by the parties in a Deployment Level Agreement and/or a Service Level Agreement as applicable.

4. CUSTOMER REPRESENTATIVES.

Customer Name: City of Grand Junction  
Contact Name: Scott Hockins Address:  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

Telephone: 970-244-1484  
Email: Scott Hockins <scotth@gjcity.org>

5. NEO REPRESENTATIVES.

NEO Fiber  
Diane Kruse  
PO Box 2664,  
Glenwood Springs, Colorado 81602  
Telephone: 970-309-3500  
Email: [dkruse@NEOfiber.net](mailto:dkruse@NEOfiber.net)

6. ADDITIONAL TERMS AND CONDITIONS.

This Task Order One and the Agreement shall be read so as to complement each other. However, in the event of an irreconcilable conflict in the terms thereof, the provisions of the Agreement shall have precedence over the terms of this Task Order One.

NEO Fiber, Inc.



Signature

Diane Kruse

Name Typed or Printed

CEO

Title

9/8/2015

Date

City of Grand Junction



Signature

Scott Hockins

Name Typed or Printed

Special Projects Manager

Title

September 8, 2015

Date