

BYLAW NO. 678	
Bylaw name:	Denman and Hornby Islands High-Speed Internet Capital Contribution Agreement Authorization Bylaw No. 678
Participants:	Electoral Area A (Denman and Hornby Islands)
Purpose:	A bylaw to authorize entering into an agreement for the capital financing of high-speed internet infrastructure
Amends bylaw:	N/A
Repeals bylaw:	N/A
Staff contact:	J. Martens, General Manager of Corporate Service; and J. Warren, Deputy Chief Administrative Officer

STATUS	
Committee approval:	<p>Electoral Area Services Committee – August 9, 2021:</p> <p>“THAT pursuant to sections 269 and 407 of the Local Government Act, participating area approval in respect of the following proposed bylaws be obtained via assent voting:</p> <ul style="list-style-type: none"> - Denman and Hornby Islands High-Speed Internet Contribution Service Establishment Bylaw No. 672, 2021; - Denman and Hornby Islands High-Speed Internet Loan Authorization Bylaw No. 673, 2021; and - Denman and Hornby Islands High-Speed Internet Capital Contribution Agreement Authorization Bylaw No. 678; <p>AND FURTHER THAT these bylaws be introduced and read three times with Bylaw No. 672 and 673 then being forwarded to the Inspector of Municipalities for approval.”</p>
1st & 2nd readings:	
3rd reading:	

Ministry approval:	
Elector approval:	
Final adoption:	

COMOX VALLEY REGIONAL DISTRICT

BYLAW NO. 678

**A bylaw to authorize entering into an agreement for the
capital financing of high-speed internet infrastructure**

WHEREAS a regional district may, pursuant to Section 275 of the *Local Government Act (RSBC, 2015, C. 1)* operate the service of providing capital financing for high-speed internet services to an area without access to high-speed internet service;

AND WHEREAS the Comox Valley Regional District has been requested to provide a capital contribution for the construction of high-speed internet infrastructure to be owned and operated by City West Cable & Telephone Corporation;

WHEREAS the Comox Valley Regional District Board has established the Denman and Hornby Island High-Speed Internet Contribution Service by the adoption of Bylaw No. 672 being “Denman and Hornby Islands High-Speed Internet Contribution Service Establishment Bylaw No. 672, 2021”;

AND WHEREAS the board wishes to enter into an agreement to provide the said capital contribution upon such terms as are considered appropriate;

AND WHEREAS the approval of the electors of the service area was obtained in accordance with the *Local Government Act (RSBC, 2015, C. 1)*;

NOW THEREFORE the board of the Comox Valley Regional District in open meeting assembled enacts as follows:

Financing Agreements Authorized

1. The Comox Valley Regional District is authorized to enter into an agreement with City West Cable and Telephone Corporation for the construction of high-speed internet infrastructure within the boundaries of the Denman and Hornby Islands High-Speed Internet Contribution Service.

Form and Substance

2. The agreement referenced in section 1 shall substantially comply in form and substance with that shown in Schedule A, attached to and forming part of this bylaw.

Authority to Execute

3. Following the adoption of this bylaw, the Chair and Corporate Officer shall have full authority to execute the agreements and such further documents as may be necessary to give effect to the agreements.

Citation

4. This Bylaw No. 678 may be cited for all purposes as the “Denman and Hornby Islands High-Speed Internet Capital Contribution Agreement Authorization Bylaw No. 678”.

Read a first and second time this	day of	2021
Read a third time this	day of	2021
Received the		
approval of the electors this	day of	2021
Public Notice of Intention to adopt bylaw		
published on the	, and	days of
Adopted this	day of	2021

Chair

Deputy Corporate Legislative Officer

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 678 being “Denman and Hornby Islands High-Speed Internet Capital Contribution Agreement Authorization Bylaw No. 678” as adopted by the board of the Comox Valley Regional District on the day of 2021.

Deputy Corporate Legislative Officer

Schedule A

LAST MILE NETWORK INFRASTRUCTURE

FINANCING AGREEMENT

THIS AGREEMENT made the ▼ day of ▼, 2021 (the "**Effective Date**").

BETWEEN:

CITY WEST CABLE & TELEPHONE CORP., a British Columbia company having its registered and records office at 510 – 1800 West Georgia Street, Vancouver, British Columbia V6B 0M3

("CITY WEST")

AND:

COMOX VALLEY REGIONAL DISTRICT, a British Columbia regional district having its principal business office at 770 Harmston Avenue, Courtenay, BC V9N 0G8

("CVRD")

WHEREAS:

A. Capitalized terms used in these Recitals and in this Agreement have the meanings ascribed to them in Section 1.1;

B. City West is a wholly-owned corporation of the City of Prince Rupert that owns and operates an integrated commercial and retail communications network business providing connectivity services including internet, television, home phone and cellular services;

C. The CVRD is responsible for, *inter alia*, providing services necessary or desirable for its region and fostering the economic and social well-being of its region;

D. The CVRD has enacted the Denman and Hornby Islands High-Speed Internet Contribution Service Establishment Bylaw No. 672, 2021 for the purpose of authorizing the provision of capital financing for high speed internet service within the geographic boundaries of the Denman and Hornby Islands High-Speed Internet Contribution Service (the "**Service Area**");

E. The Parties now wish to develop the last mile (fibre to the home) for unserved and underserved residents within the Service Area;

F. The CVRD may, pursuant to the *Local Government Act*, provide capital financing for high-speed internet service to an area without access to high-speed internet service; and

G. The Parties wish to record their respective rights and obligations with respect to the design, construction, financing, installation, maintenance and ownership of the Last Mile Network and the provision of the Services as hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the mutual terms and agreements hereinafter set forth, the Parties covenant, agree and promise each with the other as follows:

1. INTERPRETATION

1.1 **Defined Terms.** In addition to the terms otherwise defined in this Agreement, the following terms have the meanings set out below:

- (a) **“Agreement”** means the agreement including the recitals and Schedules to this agreement, as amended from time to time in accordance with this agreement.
- (b) **“Annual Gross Project Revenues”** the gross revenues paid by Project Customers to City West for communications network services that utilize the Network Infrastructure, except for Excluded Revenues.
- (c) **“Annual Net Project Revenues”** the Annual Gross Project Revenues minus the annual Operating Costs and overhead charges at cost.
- (d) **“Applicable Laws”** means all applicable federal, provincial and municipal laws, bylaws, codes, rules, regulations, ordinances and requirements applicable to the Project and the Services.
- (e) **“Business Day”** means a day other than Saturday, Sunday or a statutory holiday in British Columbia.
- (f) **“City West Group”** means, collectively, City West and City West Management Corporation and their respective affiliates.
- (g) **“City West Separate Business”** means City West’s Separate Business carried on independently from time to time by the members of the City West Group.
- (h) **“Conditions Precedent”** has the meaning given in Section 7.1.
- (i) **“Connected Coast Network”** means the fibre optic communications network comprising approximately 3,400 kilometres of subsea fibre-optic cable and the associated landing site points along the associated coastline, running from Prince Rupert, British Columbia south to Vancouver, British Columbia, and then around Vancouver Island, Haida Gwaii and further north to Lax Kw’alaams.
- (j) **“CVRD”** means the Comox Valley Regional District, a British Columbia local government having its principal business office at 770 Harmston Avenue, Courtenay, BC V9N 0G8.
- (k) **“Election Notice”** has the meaning given in Section 2.2.
- (l) **“Event of Default”** has the meaning given in Section 8.1.
- (m) **“Excluded Revenues”** has the meaning set out in Subsection 6.3(a).
- (n) **“Last Mile Network”** means the network of telecommunications infrastructure installed to connect end-users to the Connected Coast Network.
- (o) **“Local Government Act”** means the *Local Government Act*, R.S.B.C. 2015, c. 1, as may be amended or replaced from time to time.

- (p) **“Network Infrastructure”** means, collectively, all works and services to be designed, constructed and installed by City West in connection with the establishment of the Last Mile Network and for certainty, excludes any communications network assets acquired, built or otherwise created by City West as a component of City West’s Separate Business (as defined in Subsection 6.3(a)), to provide communications network services beyond the Last Mile Network or any communications infrastructure of the Connected Coast Network.
- (q) **“Non-Defaulting Party”** means a Party that is not a Party in default under Section 8.1.
- (r) **“Ongoing Capital Investment Costs”** mean, collectively any capital expansion, improvement or upgrade costs in respect of the Network Infrastructure.
- (s) **“Operating Costs”** mean, collectively, the actual out-of pocket costs incurred by City West required to operate and maintain the Network Infrastructure and the Third Party Project Sites through its life cycle following completion of construction and installation including, without limitation, costs relating to staffing, the provision of Services, taxes, insurance and capital maintenance and capital renewal/replacement costs, but do not include Ongoing Capital Investment Costs.
- (t) **“Parties”** means City West and the CVRD collectively, and **“Party”** means each of them.
- (u) **“Project”** means the development, design, construction and operation of the Network Infrastructure.
- (v) **“Project Customers”** means residents within the Service Area that receive Services from City West utilizing the Network Infrastructure.
- (w) **“Service Area”** has the meaning given in Recital D.
- (x) **“Service Records”** has the meaning given in Section 6.4
- (y) **“Services”** means, collectively, the connectivity services to be provided by City West pursuant to this Agreement and utilizing the Network Infrastructure, including high speed internet, television, home phone and mobile phone services, together with all billing and collection services, technology support and customer service required in connection with the supply of such connectivity services.
- (z) **“Substantial Completion”** means the date at which the construction of the infrastructure, technologies and facilities making up the Last Mile Network is completed such that all segments of the Last Mile Network are implemented and available to provide service to Project Customers.
- (aa) **Third Party Project Sites”** has the meaning given in Section 4.2(a).

2. THE AGREEMENT

2.1 Term

Subject to Section 2.2 below, this Agreement shall commence on the Effective Date and continue in effect in respect of the development and construction of the Project and the provision of the Services until the earlier of:

- (i) 20 years following the date of Substantial Completion; and
- (ii) the date this Agreement is terminated in accordance with Section 9 below.

2.2 Extension of Term

Unless one of the Parties delivers a written election not to renew the Agreement (the “**Election Notice**”) to the other Party on or before that date that is 180 days prior to the expiry of the then current term of this Agreement, as set out in Section 2.1(i) above, or any renewal term, as the case may be, this Agreement will automatically renew for further consecutive five (5) year renewal terms. For certainty:

- (a) if an Election Notice is delivered by one of the Parties in accordance with this Section 2.2 the Agreement will continue in effect until the expiry of the then current term; and
- (b) once a renewal term has commenced, the Agreement may only be terminated in accordance with Section 9 below.

Any renewal agreement will contain the same terms, covenants, agreements and provisos contained in this Agreement.

3. PARTIES’ RELATIONSHIP

3.1 Relationship between the Parties

Commencing on the Effective Date and continuing until termination in accordance with the provisions of this Agreement, the Parties hereby enter into this Agreement for the limited purposes set forth herein. The Parties agree that the provisions of this Agreement shall hereafter govern and define their respect rights, proceeds, revenues, benefits, liabilities, interests, powers and obligations as between themselves with respect to the completion of the Project and the provision of the Services.

3.2 Purpose

This Agreement shall be limited strictly to the Project and the provision of the Services, and shall not be extended by implication or otherwise beyond the transactions contemplated herein unless approved in writing by each Party. For certainty, except as expressly provided in this Agreement, the CVRD’s role in relation to the Project is limited to the provision of the CVRD Contribution (as defined under section 4.3(c)), in consideration for which City West has agreed to the sharing of Annual Net Project Revenues in accordance with section 6.2.

3.3 Other Activities

Nothing in this Agreement prevents or restricts either Party from carrying on any other business or venture independently or with others.

3.4 Disclaimer of Partnership

Nothing in this Agreement will constitute the Parties as partners or, except as specifically provided in this Agreement, constitute either Party as agent of the other and each Party expressly disclaims any intention to create a partnership or, except as specifically provided in this Agreement, an agency arrangement between them and covenants with the other Party that it will not at any time, allege or claim that such a partnership or agency arrangement was created.

4. PROJECT DEVELOPMENT

4.1 Project Construction

City West will, itself or through third-party contractors, design and construct the Network Infrastructure in accordance with the project milestones set out in Schedule A hereto.

4.2 Third Party Project Site Access

- (a) The CVRD will use commercially reasonable efforts to assist City West to obtain secure, long-term tenure to any lands and improvements required for the Project, including without limitation the construction, installation and operation of the Network Infrastructure, that are privately owned by third-parties (the "**Third Party Project Sites**"). For certainty, this Agreement does not require the CVRD to pay the cost of acquiring any such long-term tenures, including but not limited to the purchase price or other compensation payable to the owner of a Third Party Project Site, or any legal, survey or Land Title Office fees.

4.3 Capital Costs

- (a) City West will be responsible for identifying and obtaining grant funding from senior levels of government and other third-party sources to fund the cost of the Project. The CVRD will, upon City West's request, cooperate and provide Project related information to such funding sources to the extent reasonably necessary to facilitate City West obtaining such funding.
- (b) Subject to subsection (c) below, City West will be responsible for all costs in respect of the design, build, construction and installation of the Network Infrastructure.
- (c) In the event that City West is not able to secure funding to pay the total of all of the design, build and construction costs in respect of the Network Infrastructure ("**Network Infrastructure Costs**"), the CVRD will make a capital contribution of no more than 10% of the overall Network Infrastructure Costs up to a maximum of \$760,268 (the "**CVRD Contribution**") to City West to cover a portion of any shortfall between total actual Network Infrastructure Costs and the amount of the funding received by City West pursuant to Section 4.3(a), provided that City West covers the remaining shortfall. The CVRD Contribution may be funded from sources that include, but are not be limited to grant funding from senior levels of

government, gas tax revenues, local area service taxes, developer contributions and/or borrowing.

4.4 Operating Costs

City West will pay 100% of all Operating Costs associated with the operation, maintenance and management of the Network Infrastructure. City West will be entitled to deduct all annual Operating Costs incurred pursuant to this Agreement from the Annual Gross Project Revenues received from the provision of the Services in accordance with Section 6.2 below. For greater certainty, with respect to staffing, Operating Costs will be limited to full recovery of the cost of personnel of City West and its associated and affiliated entities, seconded, from time to time, to operate and maintain the Network Infrastructure and the Third Party Project Sites, based on such personnel's hourly pay or salary *prorated* based on the number of hours worked to; and full recovery of City West's actual costs for all compensation paid (including, without limitation, salaries, benefits, and pension contributions) for personnel assigned exclusively to the Last Mile Network.

4.5 Ownership of Network Infrastructure

Notwithstanding any CVRD Contribution made pursuant to Section 4.3(c), City West will retain sole ownership of the Network Infrastructure, including the communications network and related assets that are acquired, built or otherwise created for the purposes of delivering network services to Project Customers.

5. PROVISION OF SERVICES

5.1 City West to Provide Services

During the Term, City West will manage, maintain and operate, and oversee the operation of, the Network Infrastructure, including the operation of all equipment and facilities used for the provision of the Services within the Service Area, and all activities and undertakings ancillary and incidental thereto, with a view of profit.

5.2 Service Standards

- (a) City West will provide the Services to the Project Customers on terms and conditions customary to the telecommunications industry (including without limitation the minimum service standard commitments set out in Section 5.2(b)).
- (b) In the course of performing the Services City West will:
 - (i) dedicate and apply the time, personnel, expertise and other business resources reasonably necessary to perform the Services to a standard not less than the standard of service associated with the City West Separate Business;
 - (ii) from time to time, and promptly upon the request of the CVRD, cause senior officers to make themselves available to meet with the authorized representatives of the CVRD regarding the provision of the Services and to receive and respond to the CVRD's questions and concerns regarding the Services; and

- (iii) implement internal processes and procedures to safeguard and protect the confidential information of the CVRD and any Project Customers provided to or obtained by City West in providing the Services.

6. OPERATING COSTS AND DISTRIBUTION OF ANNUAL NET PROJECT REVENUES

6.1 Operating Costs

City West will pay 100% of all Operating Costs associated with the operation, maintenance, repair and management of the Network Infrastructure and Third Party Sites and will be entitled to deduct all annual Operating Costs from the Annual Gross Project Revenues prior to any distribution of Annual Net Project Revenues pursuant to Section 6.2.

6.2 Distribution of Net Project Revenues

Except as otherwise set out in this Agreement, the Parties agree that each year all Annual Net Project Revenues from City West's provision of the Services to Project Customers will be shared by the Parties on an annual basis as follows:

- (a) City West - 80%; and
- (b) CVRD - 20% (the "**CVRD Revenue Share**").

6.3 City West's Separate Business and Excluded Revenues

- (a) City West will develop and establish the retail pricing to be collected as Project Revenues for product offerings for communications network services provided to Project Customers through the Network Infrastructure (the "**Product Offerings**") that City West may offer for sale to its Project Customers. All revenues generated by the sale of Product Offerings to Project Customers will be received by City West for the account of the Parties as Project Revenues.

6.4 Financial Statements

City West will prepare and maintain at its principal office in British Columbia proper and sufficient books, accounts and supporting business records in respect of the provision of the Services (the "**Service Records**"). City West will also prepare financial statements of its business and affairs in relation to the Project and the Services, which annual financial statements will be prepared on an accrual basis in accordance with generally accepted accounting principles. Within 60 days of the preparation of the annual financial statements, City West will provide or cause to be provided to the CVRD an accounting showing the Project costs, Operating Costs and Annual Gross Project Revenue for the fiscal year then ending (the "**Annual Accounting Report**"). For the purpose of verifying the Annual Accounting Report, CVRD shall have the right through any agent, employee or chartered accountant designated by it, at all reasonable times during usual business hours to: (i) examine and make copies of extracts from the book and records of City West which pertain to the Project and the Annual Accounting Report; and (ii) will have the right, at its cost, to have the Annual Accounting Report audited by a chartered accountant chosen by CVRD, and acceptable to City West acting reasonably. City West will act promptly and in good faith to reimburse CVRD to the extent of any discrepancies shown to be due CVRD by any such audit that exceed in the aggregate \$5,000. If there is a discrepancy in excess of \$5,000, City West shall reimburse CVRD for its audit costs, otherwise the CVRD shall bear all expenses incurred by it in any such examination or copying made for its account.

7. CONDITIONS PRECEDENT

7.1 Conditions Precedent

The obligations of the Parties to carry out the requirements of this Agreement are subject to the following conditions (collectively, the "**Conditions Precedent**") being satisfied or waived on or before the dates set out herein:

- (a) on or before that date that is [redacted] months after the Effective Date, the Board for the CVRD approving the substantial terms of this Agreement and the transactions contemplated herein;
- (b) on or before that date that is [redacted] months after the Effective Date, the Board for City West approving the substantial terms of this Agreement and the transactions contemplated herein;
- (c) on or before that date that is [redacted] months after the Effective Date, if applicable, City West obtaining secure, long-term access rights to any Third-Party Project Sites necessary for the Project or the provision of the Services; and
- (d) on or before that date that is [redacted] months after the Effective Date, the CVRD successfully completing all statutory requirements in respect of the authorization

of this Agreement, including obtaining all approvals and publishing all required notices.

7.2 Waiver of Conditions Precedent

The Condition Precedent in Section 7.1(a) is for the CVRD's sole benefit and may be waived, unilaterally by the CVRD, at the CVRD's election. The Condition Precedent in Section 7.1(b) is for City West's sole benefit and may be waived, unilaterally by City West, at City West's election. The Conditions Precedent in Sections 7.1 (c) and (d) are mutual conditions for the benefit of both the CVRD and City West and may only be waived by both parties. If any of the Conditions Precedent are not satisfied or waived within the time herein provided then the Parties' respective obligation under this Agreement will be at an end, except as otherwise set out herein.

8. DEFAULT

8.1 Default

A Party will be in default of this Agreement if it:

- (a) fails to observe, perform or carry out any of its material obligations hereunder and such failure continues for 45 days after any of a Non-Defaulting Party has in writing demanded that such failure be cured; or
- (b) becomes bankrupt or commits an act of bankruptcy or if a receiver or receiver-manager of its assets is appointed or makes an assignment for the benefit of creditors or otherwise,

(any such event being an "**Event of Default**").

8.2 Remedies on Default

In the event of an Event of Default by a Party, any Non-Defaulting Party may do any one or more of the following:

- (a) pursue any remedy available to them in law or equity, it being acknowledged by each of the Parties that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy;
- (b) take all actions as may reasonably be required to cure the default, in which event all payments, costs and expenses incurred therefor will be payable by the defaulting Party to the other Party on demand with interest at 10%;
- (c) waive the Event of Default; or
- (d) unilaterally terminate the Agreement.

9. TERMINATION

9.1 This Agreement may only be terminated:

- (a) by the mutual agreement of the Parties; or
- (b) in accordance with Section 8.18.2(d) above.

10. INDEMNITIES

10.1 City West Indemnity

City West shall indemnify and hold harmless the CVRD from and against all claims, demands, losses, costs (including without limitations client-based solicitor costs), damages, actions, suits or proceedings, sustained by the CVRD which are arising out of any:

- (a) loss of or damage to property relating to the Project or the provision of the Services;
- (b) breach of a legal duty arising under Applicable Laws;
- (c) claim for or in respect of the death or personal injury of any individual as a result of the design, construction or installation of the Network Infrastructure;
- (d) other claim, action, charge, cost, demand or expense by a third party relating to City West undertaking the design, construction or installation of the Network Infrastructure or the provision of the Services; or
- (e) breach by City West of any representations or warranties given by it in this Agreement,

save and except to the extent caused by the negligence or willful acts or omissions or misconduct of the CVRD or as a result of a breach by the CVRD of an express provision of this Agreement.

10.2 CVRD Indemnity

The CVRD shall indemnify and hold harmless City West from and against all claims, demands, losses, costs (including without limitations client-based solicitor costs), damages, actions, suits or proceedings, sustained by City West which are:

- (a) arising out of negligence or willful acts or omissions of the CVRD, its employees, its agents or its authorized representatives to the Project Sites (provided that, in respect to the Project Sites, the CVRD has provided City West with due and reasonable notice that such representatives have been authorized by the CVRD and where such notice has not been received by City West, City West may deny access to the Project Sites to such persons);
- (b) arising out of any breach by the CVRD of any representations or warranties given by it in this Agreement; or

save and except to the extent caused by the negligence or willful acts or omissions or misconduct of City West or as a result of a breach by City West of an express provision of this Agreement.

10.3 Survival of Indemnities

The indemnities set out in Sections 10.1 and 10.2 above will be true and accurate when the Parties sign this Agreement and will continue to be true and accurate throughout the Term of this Agreement.

11. REPRESENTATIONS AND WARRANTIES

11.1 CVRD Representations and Warranties

The CVRD represents and warrants to City West that:

- (a) the CVRD is a regional district under the laws of British Columbia;
- (b) all necessary corporate action on the part of the CVRD has been taken to authorize and approve the execution and delivery of this Agreement and the completion of the obligations contemplated herein;
- (c) the CVRD has the full power, authority and capacity to enter into this Agreement and carry out the transactions contemplated herein;
- (d) the execution and performance of this Agreement does not and will not contravene any statutory requirement applicable to the CVRD at the date of the Parties entering into this Agreement;
- (e) there are no existing provisions in the CVRD's procurement, contract execution/approval, accounting and pricing policies which restrict or limit the powers of the CVRD to enter into this Agreement and to carry out the obligations contemplated herein; and
- (f) there is no action or proceeding pending, or to the CVRD's knowledge threatened, against the CVRD before any court, arbiter, arbitration panel, administrative tribunal or agency which, if decided adversely to the CVRD, might materially affect the CVRD's ability to perform its obligations hereunder or that will have an adverse effect on the timing or implementation of this Agreement.

11.2 City West Representations and Warranties

City West represents and warrants to the CVRD that:

- (a) City West has been duly incorporated, validly exists and is in good standing under the *BC Corporations Act*;
- (b) City West is duly and fully qualified, authorized, licensed and registered to carry out its activities, and to the knowledge of City West it is conducting such activities in compliance in all material respects with all Applicable Laws and regulations and all such licences, registration and qualifications are valid and subsisting and in good standing in all material respects;
- (c) all necessary corporate action on the part of the City West has been taken to authorize and approve the execution and delivery of this Agreement and the completion of the obligations contemplated herein;
- (d) there is no provision in City West's constating documents or any other agreement or documents to which City West is a party which restricts or limits the powers of City West to enter into this Agreement and to carry out the obligations contemplated herein;
- (e) City West is not subject to any obligation, non-compliance with which is likely to have a material adverse effect on its ability to undertake the Project or provide the Services; and

- (f) there are no actions, suits or proceedings pending, or to its knowledge threatened against City West in any court or before any Governmental Authority which are likely to materially adversely affect the financial condition of City West.

11.3 Survival of Representations and Warranties

The representation and warranties of the Parties as set out in Sections 11.1 and 11.2 above will be true and accurate when the Parties sign this Agreement and will continue to be true and accurate throughout the Term of this Agreement.

12. COMMUNICATIONS

12.1 Communications Protocol

All communications regarding this Agreement, or any aspect thereof, will be jointly agreed upon prior to any public release and the parties agree that they will not engage in any communications, advertising or media interviews regarding any of the matters described in this Agreement without the prior written consent of the other party.

13. GENERAL

13.1 Confidentiality and FOIPPA Compliance

1. The CVRD and City West acknowledge and agree that each of them, by virtue of either being a local government or corporation affiliated with a local government under the *Local Government Act*, as applicable, are subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) from time to time in force and all amendments thereto and includes all regulations and amendments thereto made pursuant to that Act (collectively, "**FOIPPA**"); and each of the Parties will comply with the requirements of the FOIPPA.
- (b) Except as required by FOIPPA, a Party will not, at any time either during the duration of this Agreement or thereafter, disclose to or discuss with others any confidential knowledge or information concerning the Project or Project Customers, and no Party will use, for its own benefit or any other purpose, or make notes of any confidential knowledge or information that has been obtained relating to the Project or the Project Customers except with the other Party's prior written consent.

13.2 Amendments

No amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each Party to this Agreement at the time of the amendment, supplement, restatement or termination.

13.3 Construction

The division of this Agreement into Sections, Subsections and Schedules, the insertion of headings and the provision of a table of contents are for convenience only, do not form a part of this Agreement and will not be used to affect the construction or interpretation of this Agreement. The word "including" will not be construed as limiting the general term or statement immediately preceding. Unless otherwise specified:

- (a) each reference in this Agreement to "**Section**", "**Subsection**" and "**Schedule**" is to a Section or Subsection of, and a Schedule to, this Agreement;
- (b) each reference to a statute is deemed to be a reference to that statute, and to the regulations made under that statute, as amended or re-enacted from time to time;
- (c) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (d) references to time of day or date mean the local time or date in Vancouver, British Columbia,
- (e) all references to amounts of money mean lawful currency of Canada, and
- (f) an accounting term has the meaning assigned to it, and all accounting matters will be determined, in accordance with Canadian generally accepted accounting principles consistently applied.

13.4 Time

Time will be of the essence of this Agreement.

13.5 Assignment

No Party will assign this Agreement, or any part of this Agreement, without the consent of the other Party. Any purported assignment without the required consent is not binding or enforceable against any Party.

13.6 Notice

All notices to a Party by another Party must be in writing and delivered to or sent by electronic transmission addressed to the Party set out on the first page of this Agreement or to any other address, e-mail address or individual that the Party designates. Any notice:

- (a) if validly delivered, will be deemed to have been given when delivered;
- (b) if validly transmitted by sent by electronic transmission before 3:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day, and
- (c) if validly transmitted by sent by electronic transmission after 3:00 p.m. (local time at the place of receipt) on a Business Day, will be deemed to have been given on the Business Day after the date of transmission.

13.7 Dispute Resolution

All disputes between the Parties arising out of or in connection with this Agreement, which cannot be settled by them, will be resolved in the following manner:

- (a) First, the Parties will use all reasonable efforts to resolve any dispute, controversy, non-agreement or claim (a “**Dispute**”) through good faith negotiations.
- (b) Second, if such good faith negotiations do not resolve the Dispute, the following will apply: if such a Dispute should arise, senior designated representatives of each Party (“**Designated Representatives**”) will attempt to resolve the matter within fourteen (14) days of the matter being referred to them, or any other period agreed upon by the Parties; in the event that the Designated Representatives are unable to resolve the matter within fourteen days of the matter being referred to them, or any other period agreed upon, such matter will initially be attempted to be resolved by mediation as set out below.
- (c) **Mediation.** In the event that the Dispute is not resolved within forty five (45) days of the internal mechanisms described above, the Parties will refer the matter to non-binding mediation, with the mediation to be chosen by the Parties upon agreement at such time. The Parties will share the cost of the mediation equally. The decision of the mediator will not be binding on the Parties.
- (d) **Arbitration.** In the event the Dispute is not resolved through mediation, then the Dispute will be referred to a single arbitrator under the *Arbitration Act* (BC) then in effect in British Columbia whose decision thereon will be determined by the majority decision of the panel of arbitrators and will be final, binding and conclusive.

All arbitration proceedings will be conducted, unless the Parties otherwise agree, in Vancouver, British Columbia. Any matter, issue or dispute referred to arbitration will be dealt with on an expeditious basis with the Parties using all commercially reasonable efforts to obtain and implement a timely decision of the arbitration panel.

Any Party may at any time after a matter, issue or dispute referred to arbitration under this Section has been outstanding for 180 days, calculated from the date of delivery of the initial notice of dispute in respect thereof, commence proceedings in the Supreme Court of British Columbia to have the dispute determined therein, whereupon all arbitration proceedings will terminate except that no such proceedings may be commenced unless such Party has determined, acting reasonably and in good faith, that such Court proceedings are reasonably likely to resolve the matter in dispute in a manner that is more timely or less costly, or both, than would be the case if the arbitration proceeding continued; or competent jurisdiction for any remedy that is beyond the jurisdiction of the arbitrator to grant and which a Party reasonably requires in order to maintain its rights under this Agreement.

13.8 Entire Agreement

This Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, discussions, undertakings, representations, warranties and understandings, whether written or oral.

13.9 Further Assurances

The Parties will from time to time promptly execute and deliver all further documents and take all further action necessary or appropriate to give effect to the provisions and intent of this Agreement and to complete the transactions contemplated hereby.

13.10 Severability

Each provision of this Agreement is severable. If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, the illegality, invalidity or unenforceability of that provision will not affect:

- (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or
- (b) the legality, validity or enforceability of that provision in any other jurisdiction.

except that if:

- (c) on the reasonable construction of this Agreement as a whole, the applicability of the other provision presumes the validity and enforceability of the particular provision, then the other provision will be deemed also to be invalid or unenforceable; and
- (d) as a result of the determination by a court of competent jurisdiction that any part of this Agreement is unenforceable or invalid and if, as a result of this Section, the basic intentions of the Parties in this Agreement are entirely frustrated, then the Parties will use all reasonable efforts to amend, supplement or otherwise vary this Agreement to confirm their mutual intention in entering into this Agreement.

13.11 Counterparts

This agreement may be executed and delivered in any number of counterparts with the same effect as if all Parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

13.12 Delivery by Electronic Means

Any Party may deliver an executed copy of this Agreement by electronic mail transmission, but that Party will dispatch by delivery in person to the other Party an originally executed copy of this Agreement as soon as is reasonably practicable thereafter.

13.13 Governing Law

This agreement will be governed exclusively by, and are to be enforced, construed and interpreted exclusively in accordance with, the laws of British Columbia and the laws of Canada applicable in British Columbia which will be deemed to be the proper law of this Agreement.

13.14 Succession

This agreement will enure to the benefit of and be binding on the Parties, their respective permitted assigns, successors, heirs, executors and administrators.

13.15 Legal Advice

Each of the Parties acknowledge and agree that they have obtained independent legal advice with respect to this Agreement and the obligations and liabilities set out herein.

IN WITNESS WHEREOF the Parties have hereunto set their hands and affixed their seals as of the day and year first above written.

<p>CITY WEST CABLE AND TELEPHONE CORP.</p> <p>Per: _____ Authorized Signatory</p>	<p>COMOX VALLEY REGIONAL DISTRICT</p> <p>Per: _____ [Name]</p> <p>Title: _____</p>
<p>CITY WEST CABLE AND TELEPHONE CORP.</p> <p>Per: _____ Authorized Signatory</p>	<p>COMOX VALLEY REGIONAL DISTRICT</p> <p>Per: _____ [Name]</p> <p>Title: _____</p>