

# **INTERGOVERNMENTAL AGREEMENT REGARDING SHARING OF CONDUIT AND FIBER BETWEEN THE CITY OF WESTMINSTER AND ADAMS COUNTY**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Westminster, located at 4800 West 92<sup>nd</sup> Avenue, Westminster, CO 80031 (hereinafter referred to as the "City") and Adams County, Colorado, located at 4430 South Adams County Parkway, Brighton, CO 80601 (hereinafter referred to as the "County"). City and County shall be referred to herein, individually as a "Party" and, collectively, as the "Parties."

## **RECITALS**

WHEREAS, pursuant to Colorado Constitution Article XIV, § 18(2)(a) and § 29-1-203, C.R.S., as amended, the Parties may cooperate or contract with each other to provide any function or service lawfully authorized to each; and,

WHEREAS, the Parties recognize that each has excess conduit and fiber capacity to provide to the other on an ongoing basis without negatively impacting the ability for either to provide for current and future network services for their jurisdictions; and,

WHEREAS, the County has an Information Technology Data Center ("County Data Center") that is currently used for County information technology purposes and that has excess capacity that can be provided to other parties; and,

WHEREAS, the Parties now wish to enter into this agreement for the purpose of sharing of conduit space, fiber optics, and data center space in order to improve City and County services and to reduce overall network installation and other related and ongoing costs for both parties; and,

WHEREAS, the Parties acknowledge that limited funding and increasing construction costs would make the return on investment unattractive for a single jurisdiction to pursue these network infrastructure investments; and,

WHEREAS, the Parties have agreed to an ongoing maintenance and repair program to support network services.

## **AGREEMENT**

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. USE OF CONDUIT AND EXISTING FIBER.**

- a) The City shall provide a 1.5 inch conduit from 116<sup>th</sup> Street and Pecos to 124<sup>th</sup> Street and Pecos for perpetual exclusive use by the County.

- b) The County will install County owned fiber in the City conduit to complete a portion of the fiber route needed to connect between the Adams County Datacenter and the Adams County Human Services Center located at 11860 Pecos, Westminster, Colorado. The County may also use fiber installed in the City conduit referenced in this Agreement for any other future County network requirements.
- c) The County will be responsible for the maintenance and repair of County owned fiber installed in City owned conduit.
- d) The County will be responsible for the repair of any City owned conduit used exclusively by the County as part of this Agreement.
- e) The County will be responsible for the maintenance and repair of all County owned fiber provided to the City as part of this Agreement.
- f) The County will provide the perpetual use of one pair of dedicated fiber from 116<sup>th</sup> Street and Pecos Street to the Adams County Datacenter located at 4430 South Adams County Parkway, Brighton, Colorado 80601.
- g) The City will pay for all expenses associated with connecting City owned fiber to County owned fiber at the above noted 116<sup>th</sup> Street and Pecos Street location, as well as the termination of the fiber as necessary.

2. **GRANT OF LICENSE.** County hereby grants to the City the right and non-exclusive license (“License”) to install and operate information technology equipment in the southwest corner of the County Data Center located at 4430 South Adams County Parkway, Brighton, Colorado 80601.

- a) Permitted Uses. City has the right to use the County Data Center space solely for the purpose of (i) installation of equipment in the applicable space, (ii) maintaining the equipment, (iii) operating the equipment, and (iv) removing the Equipment (collectively, the “Permitted Use”) in accordance with the terms of this Agreement. Unless otherwise agreed by the Parties in writing, the City shall perform the Permitted Use at its sole cost and expense. The City shall not use or allow or permit the use of the applicable space for any use or purpose other than a Permitted Use.
- b) Prohibited Uses. Without limiting the general permitted uses in Section 1(a) above, the City is prohibited from using the County Data Center to provide services for any other entity.
- c) Not a Grant of an Interest in Real Property. City represents, warrants, acknowledges and agrees that it does not have, has not been granted and will not own or hold any real property interest in the County Data Center; that it is a licensee not a tenant or lessee of the County Data Center; and that it does not have any of the rights, privileges or remedies that a tenant or lessee would have under a real property lease or occupancy agreement.

- d) Installation Costs. The City will be responsible for all expenses associated with the installation of required network hardware and connection to City owned hardware that is installed in the County Data Center.
- e) Relocation of Customer Equipment. Notwithstanding the foregoing, upon ninety (90) days prior written notice or, immediately in the event of an emergency, the County reserves the right to relocate, change or otherwise substitute replacement space in the County Data at any time, provided that the replacement space is substantially similar in size and configuration to the original space.
- f) Space and Power. The County will provide sufficient space for one rack of computer equipment in order to provide the option for the City to locate data servers and storage for backup and recovery purposes within the County Data Center. The rack shall be arranged in a manner to ensure County staff adequate emergency egress. The County will ensure adequate power is available; however, power strips within the rack are the responsibility of the City.
- g) Access. The County will provide escorted access to the County data center during normal business hours, Monday through Thursday, 8 AM until 5 PM, or card-key access on an as needed basis.
- h) Activity. The City and its Representatives agree to adhere and abide by all security and safety measures established by the County, including the Facilities Use Policy. In addition, The City and its Representatives shall not do or participate in any of the following: (1) misuse or abuse of County property or equipment or third-party equipment, (2) make any unauthorized use of or interfere with any property or equipment of any other County customers, (3) engage in any activity that is in violation of the law or aids or assists in any criminal activity while on County property or in connection with the County Data Center or the Services provided hereunder.
- i) Clean Space. The City and its Representatives shall keep the County Data Center clean at all times. The City and its Representatives, shall not, except as otherwise agreed to in writing by the other Party, (1) store any paper products or other combustible materials of any kind in the County Data Center (other than equipment manual), or (2) bring any Prohibited Materials (as defined below) into the County Data Center. "Prohibited Materials" shall including, but not be limited to, the following and any similar items: (1) food and drink, (2) tobacco products, (3) explosives and weapons, (4) hazardous materials, (5) alcohol, illegal drugs and other intoxicants, (6) electromagnetic devices which could unreasonably interfere with computer and telecommunications equipment, (7) any other item the County deems disruptive and damaging to the County Data Center or its operations.

3. **RULES AND REGULATIONS.** Each party agrees to abide by and honor the terms and conditions contained in this Agreement and all rules, regulations, policies and

procedures with regard to the use of the County Data Center including but not limited to, the County's Acceptable Use Policy, Facilities Use Policy and Data Center Operation Plan, all as amended from time-to-time, copies of which will be provided to the City upon request.

4. **CONFIDENTIALITY.** Each Party, for themselves, their agents, employees and representatives, agrees that it will not divulge any confidential or proprietary information it receives from the other Party, except as may be required by law.
5. **INSURANCE.** Each Party shall maintain such insurance by self insurance or otherwise as will protect it from claims which may arise out of or result from its operations and use under this Agreement, whether such operations or use be by itself or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable.
6. **DISCLAIMER OF WARRANTY.** Upon execution and delivery of the Agreement, each Party accepts the space or facility of the other (as applicable) on an "as is where-is" basis. Except as otherwise specified in this Agreement, each Party makes no representations or warranties, express or implied, as to the condition of the Space provided or the Data Center and specifically disclaims, any and all express or implied representations or warranties including without limitation, any warranties of merchantability or fitness for a particular purpose.
7. **LIMITATION OF LIABILITY.** EACH PARTY AGREES THAT THE OTHER PARTY SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF USE, INTERRUPTIONS OF BUSINESS OR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER UNDER THIS AGREEMENT OR OTHERWISE, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES SHALL NOT BE LIABLE FOR ANY TYPE OF DOWNTIME OR CONNECTIVITY FAILURE OR SERVICE INTERRUPTION. EACH PARTY AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES ASSUME ALL RISK, INCLUDING, WITHOUT LIMITATION, FALLS AND ELECTRIC SHOCKS, AND RELEASES THE OTHER PARTY AND ITS AGENTS, EMPLOYEES AND REPRESENTATIVES FROM ANY LIABILITY WHATSOEVER ARISING OUT OF ANY DAMAGE, LOSS OR INJURY TO PERSON AND/OR PROPERTY.
8. **FORCE MAJEURE.** Neither Party to this Agreement will be in violation of the Agreement if the failure to perform the obligations is due to an event beyond such Party's control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other event of a magnitude or type for which precautions are not generally taken in the industry.
9. **ASSIGNMENT AND SUBLICENSE.** This Agreement is voidable if assigned by either Party.

10. **ATTORNEYS' FEES.** If any legal or administrative action or proceeding is brought by either Party against the other Party to enforce or interpret any term or provision of this Agreement, each Party shall be responsible for its own attorneys' fees and costs incurred in connection with the prosecution or defense of such action or proceeding. The foregoing includes, without limitation, attorneys' fees and costs of investigation incurred in appellate and remand proceedings.
11. **RELATIONSHIP OF THE PARTIES.** The Parties agree that their relationship hereunder is in the nature of independent contractors. Neither Party shall be deemed to be the agent, partner, joint venturer or employee of the other, and neither shall have any authority to make any agreements or representations on the other's behalf. Each Party shall be solely responsible for the payment of compensation, insurance and taxes of its own personnel, and such personnel are not entitled to the provisions of any employee benefits from the other Party. Neither Party shall have any authority to make any agreements or representations on the other's behalf without the other's written consent.
12. **AMENDMENT.** This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and, except as provided, this Agreement may not be modified or amended except by written agreement of the parties; provided, however, each Party may amend and update its Acceptable Use Policy, Data Center Operation Plan and Facilities Use Policy from time-to-time without amendment to this Agreement or consent of the other Party to such changes.
13. **MISCELLANEOUS PROVISIONS.**
- a) Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado and venue shall be in the County of Adams, State of Colorado.
- b) Survival. Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement which may require continued performance or compliance beyond the termination date of this Agreement shall survive such termination date and shall be enforceable as provided herein in the event of a failure to perform or comply by a party to this Agreement.
- c) Notices. Any notice or communication given pursuant to this Agreement shall be given in writing, either in person (deemed given when actually received) or by certified mail, return receipt requested (deemed given at the time indicated on the completed return receipt). Notice shall be given to the parties at the following addresses:

Adams County:  
Director of Information Technology  
4430 South Adams County Parkway  
Suite C3000  
Brighton, Colorado 80601

with a copy to:  
Adams County Attorney  
4430 South Adams County Parkway  
Suite C5000B  
Brighton, Colorado 80601

The City of Westminster:  
Director of Information Technology  
4800 W. 92<sup>nd</sup> Avenue  
Westminster, Colorado 80031

- d) Compliance with the Laws. Each Party shall observe and comply with all applicable laws, including but not limited to federal, state and local laws, regulations, rules or ordinances that affect those employed or engaged by it, the materials or Equipment used and shall procure any and all necessary approvals, licenses and permits, all at its own expense.
- e) Waiver. No term or condition of this Agreement shall be deemed to have been waived by either Party unless the waiver is in writing and signed by the waiving Party or their duly authorized representative.
- f) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.
- g) Headings. The section headings provided herein are for convenience only and shall have no force or effect upon the construction or interpretation of any provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF WESTMINSTER

(SEAL)

By \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

ADAMS COUNTY

(SEAL)

By \_\_\_\_\_

ATTEST:

Title \_\_\_\_\_

\_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Adams County Attorney's Office