

**RESOLUTION 2019-072
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY AND THE CITY OF
LOVELAND FOR THE SHARED USE OF REGIONAL
BROADBAND TRANSPORT AND ACCESS SERVICES**

WHEREAS, prior to the date of this Resolution, voters of the City of Fort Collins (“City”) and the City of Loveland (“Loveland”) approved all legally required ballot measures at general elections, authorizing each city to acquire and operate independent municipal broadband utility facilities and networks, and

WHEREAS, the City is a Colorado home-rule municipality which has undertaken the establishment and operation of a municipal broadband utility, and

WHEREAS, in accordance with Loveland City Council resolution #R-107-2018, Loveland, a Colorado home-rule municipality, has also undertaken the establishment and operation of a municipal broadband utility, and

WHEREAS, Loveland City Council resolution #R-107-2018 directed the Loveland city manager to establish a retail model broadband network with regional collaboration involving regional partnerships with other governmental entities, broadband utility enterprises, and owners of fiber optic cable in order to capitalize on the regional municipal broadband opportunities available to the Loveland broadband enterprise, and

WHEREAS, to provide reliable competitive and cost-effective broadband utility services, the City and Loveland (collectively, the “Cities”) desire to collaborate with each other and neighboring governments or broadband enterprises, to leverage resources and efficiencies, including existing fiber optic connections between the Cities, for the benefit of each city’s residents and ratepayers, and

WHEREAS, the Cities need access to regional and national telecommunications data facilities with sufficient capacities and speeds to transport data between each city’s broadband network and interstate and international telecommunications networks to meet each city’s commitments to its respective customers, and

WHEREAS, the City has negotiated the acquisition of access to such regional and national telecommunications data facilities with third party vendors, and the Cities’ respective staffs have determined that the Cities will conserve resources by sharing bulk purchase and use of such access, rather than each city independently purchasing such access, and

WHEREAS, in light of the current cost savings to the Cities and the potential for future coordination and cost saving offered by this joint purchasing opportunity, the Cities desire to coordinate efforts to obtain sufficient access to the telecommunications data facilities in accordance with the terms of the Intergovernmental Agreement for Shared Access to Broadband

Transport and Access Facilities attached hereto as Exhibit "A" (the "IGA") and incorporated by this reference, and

WHEREAS, as Colorado governmental entities, the Cities are each authorized, pursuant to C R S Section 29-1-203, to cooperate or contract with one another to acquire or provide any government function, service, or facility lawfully authorized to each, and

WHEREAS the City Council has determined that the IGA is in the best interests of the City, its citizens and ratepayers to accomplish the purposes set forth therein, and that the City Manager should be authorized to execute the IGA between the City and the City of Loveland

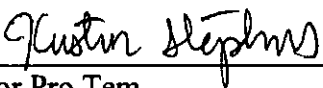
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows

Section 1 That the City Council hereby makes and adopts the determinations and findings contained in the recitals above

Section 2 That the City Council hereby approves the IGA and authorizes the City Manager, in consultation with the City Attorney and consistent with this Resolution, to finalize the IGA and its exhibits and to execute it on the City's behalf in substantially the form attached hereto as Exhibit "A"

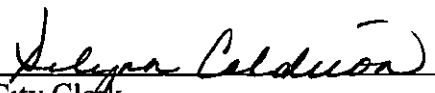
Section 3 That in addition, the City Manager is authorized, in consultation with the City Attorney, to agree to amendments to the IGA as the City Manager determines to be reasonably necessary and appropriate to protect the City's interests or to effectuate the purposes of this Resolution, including amendment reducing Loveland's annual Financial Commitment down to an amount of no less than \$100,000 over the twenty-four month term of the IGA

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 4th day of June, A D 2019



Mayor Pro Tem

ATTEST



City Clerk



**INTERGOVERNMENTAL AGREEMENT
FOR
SHARED ACCESS TO BROADBAND TRANSPORT AND ACCESS FACILITIES**

THIS INTERGOVERNMENTAL AGREEMENT FOR SHARED ACCESS TO BROADBAND TRANSPORT AND ACCESS FACILITIES (“Agreement”) is made and entered into this ____ day of _____, 2019 by and between the CITY OF FORT COLLINS, COLORADO, a home-rule municipality (“Fort Collins”) and the CITY OF LOVELAND, COLORADO a home-rule municipality (“Loveland”), (collectively the “Cities”)

WHEREAS, prior to the date of this Agreement, voters of Fort Collins and Loveland approved all legally required ballot measures at general elections, authorizing each city to acquire and operate independent municipal broadband utility facilities and networks, and

WHEREAS, Fort Collins is a Colorado home rule municipality which has undertaken the establishment and operation of a municipal broadband utility, and

WHEREAS, Loveland is a Colorado home-rule municipality which has undertaken the establishment and operation of a municipal broadband utility, and

WHEREAS, as Colorado governmental entities, Fort Collins and Loveland are authorized, pursuant to C R S § 29-1-203, to cooperate or contract with one another to acquire or provide any government function, service, or facility lawfully authorized to each, and

WHEREAS, to provide reliable, competitive, and cost-effective broadband utility services, the Cities desire to collaborate with neighboring governments or broadband enterprises, to leverage resources and efficiencies, including existing fiber optic connections between the Cities, for the benefit of each city’s residents and ratepayers, and

WHEREAS, the Cities both need access to regional and national telecommunications data facilities, with sufficient capacities and speeds, to transport data between each city’s broadband network and interstate and international telecommunications networks to meet each city’s commitments to its respective customers, and

WHEREAS, Fort Collins has negotiated the acquisition of access to such regional and national telecommunications data facilities with third party vendors, and the Cities’ respective staffs have determined that the Cities will conserve resources by sharing bulk purchase and use of such access, rather than each city independently purchasing such access, and

WHEREAS, in light of the current cost savings to the Cities and the potential for future coordination and cost saving offered by this joint purchasing opportunity, the Cities wish to coordinate efforts to obtain sufficient access to the telecommunications data facilities in accordance with the terms of this Agreement, and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Cities agree as follows

1 **Definitions**

As used in this Agreement the terms below shall have following meanings

Transport and Access Telecommunications facilities leased or otherwise acquired by Fort Collins for the purpose of transporting data from the Cities', and any other local entity's, broadband networks to interstate and international telecommunications networks

Transport and Access Costs All costs paid to one or more third-party vendors, including but not limited to, one-time hook up costs, one-time servicing fees, capital costs, and monthly bandwidth costs, for lease or other acquisition of Transport and Access

- 2 **Term** The term of the Agreement is from the date first written above until twenty four months after Fort Collins executes one or more contract(s) for Transport and Access or until the Agreement is terminated, as set forth in Section 6 c (the "Term") The Term of this Agreement may be extended by up to three one-year periods at the discretion of Fort Collins' Broadband Executive Director and Loveland's Municipal Fiber Manager by written amendment of this Agreement Any such extension periods shall be included in the 'Term' as defined herein

- 3 **Transport and Access Contracted for by Fort Collins** Fort Collins shall negotiate and contract for access to Transport and Access to be paid for by the Cities in accordance with this Agreement The Transport and Access that Fort Collins shall lease or otherwise acquire in furtherance of this Agreement shall meet the following minimum specifications

- a* Be of sufficient capacity and quality for both Cities to each provide a 10-gigabit (Gig) per second service to their broadband customers for the Term,
- b* Connect the Cities broadband networks directly to data centers in Denver, Colorado, Philadelphia, Pennsylvania, Sacramento, California, and any other data centers agreed upon by the Cities
- c* Initial Transport and Access provided through Fort Collins shall include the following connections/components
- | | |
|--|---|
| • 10 Gig to Sacramento (Data & Video) | • Burstable bandwidth in Sacramento |
| • 1 Gig Ethernet to Philadelphia (Voice) | • Dark Fiber to Denver |
| • 10 Gig dedicated in Denver | • Cross Connects in Sacramento and Denver |

In its sole discretion, Fort Collins may contract for additional Transport and Access for its own use or the use of any other party with whom Fort Collins wishes to collaborate However, Loveland's financial liability under this Agreement shall only extend to the Transport and Access Costs as provided in Section 4 below

4 **Payment for Transport and Access** Fort Collins shall directly pay any third-party vendor for the Transport and Access Costs. Thereafter, partial recovery of those costs by Fort Collins shall be as set forth below

a Loveland shall be responsible for Transport and Access Costs in the following amounts during the Term of this Agreement

- 1 During the first twelve months, 33% of total Transport and Access Costs, and
- 11 During the second twelve months, a pro rata amount based on the anticipated number of user accounts serviced by Loveland's broadband network relative to the total number of user accounts serviced by all entities using the Transport and Access over the course of the second twelve months, and
- 111 The Cities will separately negotiate a cost sharing methodology, based on each city's actual Transport and Access use, for successive twelve month periods/years of this Agreement, if extended

b Loveland shall pay Fort Collins for Transport and Access Costs on a monthly basis beginning the first full month following Fort Collins' execution of the first contract for Transport and Access

5 **Proportional Payment Obligations and Release** To the extent Fort Collins withholds payment, is released from payment obligations, or receives rebates, refunds reimbursements or any financial or in-kind relief from any third-party vendor delivering Transport and Access, Loveland shall be afforded proportionate relief in the same manner as Fort Collins

6 **Access to Transport and Access** Fort Collins agrees to use good faith efforts to ensure that its access to and use of the Transport and Access does not unreasonably interfere with Loveland's access and use. Loveland agrees to use good faith efforts to ensure that its access to and use of the Transport and Access does not unreasonably interfere with Fort Collins' access and use

a As the city with immediate geographical access to the Transport and Access, Fort Collins recognizes that Loveland will access the Transport and Access within the boundaries of Fort Collins and by use of facilities, such as routers, to be owned by Fort Collins and shared by the Cities. As such, Fort Collins agrees to acquire equipment of appropriate size, make, or model to ensure Loveland can reasonably access the Transport and Access

b The Cities will address cost-sharing for the purchase of such network equipment and associated license or other costs, technical and support services in a separate agreement

- c. If the Cities do not enter into a separate written agreement regarding network equipment and associated service cost-sharing within one hundred and eighty (180) days of signing this Agreement, Fort Collins may terminate this Agreement with no further liability as to delivering Transport and Access
- d. Fort Collins' obligations under this Agreement shall further be contingent on Loveland securing access to Platte River Power Authority long-haul fiber or other communication infrastructure physically connecting the Cities' respective networks

7 Sharing Information Regarding Transport and Access In order to ensure consistent and effective operation of each city's broadband network, the Cities agree to share with each other all useful information regarding the Transport and Access, as necessary and permissible in the discretion of Fort Collins' Broadband Executive Director and Loveland's Municipal Fiber Manager

Notwithstanding the above, the Cities agree to otherwise treat as confidential (a) all information owned by the other party, or that relates to the business of the other party, or that is used by the other party in carrying on business, and (b) all information that is proprietary to a third party (including the other city's customers and suppliers) The Cities shall not disclose such information to any person not having a legitimate need-to-know and approved by the other city, nor use such information in any form to obtain an economic or other benefit for itself, or any third party If such information is required by law, regulation or court order to be disclosed, the subject city's disclosure shall not be greater than that which is required, and in the event of such disclosure, the disclosing city shall furnish a copy of this Agreement to anyone requiring such disclosure and promptly advise the other city in writing of each required disclosure

8 Notice Prior to Expiration of Term At least one hundred and eighty (180) days prior to the expiration of this Agreement, Fort Collins' Broadband Executive Director and Loveland's Municipal Fiber Manager, or their designees, shall meet to discuss potential extension and/or amendment of this Agreement, and/or integration of the separate agreement for network equipment and associated service cost-sharing into this Agreement Nothing set forth in this Section 8 shall be deemed to delay or otherwise extend the scheduled expiration of the Term of the Agreement

9 Subject to Appropriation, No Multiple Year Obligation It is understood and agreed by the Cities that any obligation of Fort Collins or Loveland hereunder, whether direct or contingent, shall extend only to funds appropriated by the Cities' respective city councils and encumbered for the purpose of this Agreement The Cities do not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years Likewise, this Agreement shall not create a multiple-fiscal year direct or indirect debt or financial obligation of either Fort Collins or Loveland

- 10 **Employee Status** All employees of each city who perform any services in relation to this Agreement shall remain the employees solely of the city which employed them to perform such services and not of the other city
- 11 **Governmental Immunity Act** No term or condition of this Agreement shall be construed or interpreted as a waiver, by any party, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C R S § 24-10-101 et seq
- 12 **Entire Agreement** This Agreement contains the entire agreement of the Cities relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the Cities
- 13 **No Third Party Beneficiary** The Cities understand and expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Cities Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person It is the express intention of the Cities that any person other than Fort Collins or Loveland receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only
- 14 **Severability** In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement
- 15 **Headings** Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement
- 16 **Notices** Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested

If to Fort Collins Colman Keane, Broadband Executive Director
Fort Collins Connexion
215 N Mason Street
PO Box 580
Fort Collins, CO 80521
ckeane@fcgov.com
970-224-6001

With copies to Fort Collins City Attorney's Office
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80521

970-221-6520

If to Loveland Briana Reed-Harmel, Municipal Fiber Manager
City of Loveland, Water and Power
200 Wilson Avenue
Loveland, CO 80537
Briana Reed-Harmel@cityofloveland.org
970-962-3592

With copies to Loveland City Attorney's Office
Broadband Matters
500 East 3rd Street, Suite 330
Loveland, CO 80537

- 17 **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 Larimer, State of Colorado
- 18 **Legal Constraints** The Cities recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States and imposed upon Fort Collins by its Charter and Municipal Code, and, subject to such constraints, the Cities intend to carry out the terms and conditions of this Agreement Notwithstanding any other provision in this Agreement to the contrary, in no event shall either of the parties hereto exercise any power or take any action which shall be prohibited by applicable law
- 19 **Counterparts** This Agreement may be executed in separate counterparts, and the counterparts taken together shall constitute the whole of this Agreement
- 20 **Electronic Signature** This Agreement may be executed by electronic signature in accordance with C R S § 24-71 3-101 *et seq*

[Signature appear on the following page]

IN WITNESS WHEREOF, the Cities have executed this Agreement as of the date first above written

CITY OF FORT COLLINS, COLORADO

By _____
City Manager

APPROVED AS TO FORM

By _____
Assistant City Attorney

ATTEST

By _____
City Clerk

CITY OF LOVELAND, COLORADO

By _____
City Manager

APPROVED AS TO FORM

By _____
Assistant

ATTEST

By _____
City Clerk