

RESOLUTION 2020-037
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY, THE CITY OF LOVELAND,
AND THE TOWN OF ESTES PARK FOR SHARED BROADBAND
TECHNICAL AND NETWORK SUPPORT SERVICES

WHEREAS, the City of Fort Collins (“City”), the City of Loveland (“Loveland”), and Town of Estes Park (“Estes”) (collectively, “the Municipalities”) are, as a legal matter, each independently authorized to acquire and operate independent municipal broadband utility facilities and networks; and

WHEREAS, the City is a Colorado home-rule municipality that has undertaken the establishment and operation of a municipal broadband utility known as Fort Collins Connexion; and

WHEREAS, in 2019, the Municipalities each independently established local retail model broadband networks relying on regional partnerships with other governmental entities, broadband utility enterprises, and owners of fiber optic cable, capitalizing on regional municipal broadband opportunities available to the Municipalities; and

WHEREAS, on June 21, 2019, the Fort Collins City Council approved Resolutions 2019-072 and 2019-073, authorizing intergovernmental agreements to provide transport and access services to Loveland and Estes using the City’s contracted rights to use third-party telecommunication networks to route data to interstate and international telecommunications networks; and

WHEREAS, in addition to benefits available through sharing transport and access services, the Municipalities’ broadband enterprise staffs have identified a need access to shared regional broadband technical and network support services (Technical and Network Support Services), with sufficient capacity to provide technical support and initiate local service requests for all three Municipalities’ broadband networks; and

WHEREAS, the City has negotiated the acquisition of facilities and personnel to provide Technical and Network Support Services and the Municipalities’ respective staffs have determined that sharing such resources, rather than each independently investing in similar facilities and personnel, will provide efficiencies and conserve resources for all; and

WHEREAS, in light of the cost savings and potential future benefits of jointly provided Technical and Network Support Services, the Municipalities desire to enter into the Intergovernmental Agreement for Shared Broadband Technical and Network Support Services attached hereto as Exhibit “A” (the “IGA”) and incorporated by this reference; and

WHEREAS, as Colorado governmental entities, the Municipalities are each 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, 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, Loveland and Estes.

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 behalf of the City's behalf, in substantially the form attached hereto as Exhibit "A".

Section 3. That in addition, the City Manager is authorized, during the term of the IGA and in consultation with the City Attorney, to approve and execute such amendments to the IGA as the City Manager determines to be reasonably necessary and appropriate to: (a) protect the City's interests or to effectuate the purposes of this Resolution; (b) provide a benefit to the City; and (c) limit the City's financial obligation to expenditure of funds already appropriated and approved by Council or conditioned upon such appropriation .

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of April, A.D. 2020.

DocuSigned by:
Wade Troxell
F972F432DED1484...

Mayor

ATTEST:

DocuSigned by:
Silvan Calderon
DA94896740DA4BA...

City Clerk

**INTERGOVERNMENTAL AGREEMENT FOR
SHARED BROADBAND TECHNICAL AND NETWORK SUPPORT SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT FOR SHARED BROADBAND TECHNICAL AND NETWORK SUPPORT SERVICES (“Agreement”) is made and entered into this ____ day of _____, 2020, by and between the CITY OF FORT COLLINS, COLORADO, a home-rule municipality (“Fort Collins”) and Loveland, Estes Park and those additional Colorado governmental entities listed on Exhibit A (“Affiliates”) (collectively the “Parties”).

WHEREAS, prior to the date of this Agreement, voters of Fort Collins and the Affiliates, respectively, approved legally required ballot measures at general elections, authorizing each entity to acquire and operate independent 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, each Affiliate is a Colorado governmental entity, as further described on Exhibit A, which has undertaken the establishment and operation of a broadband utility; and

WHEREAS, as Colorado governmental entities, the Parties 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 Parties desire to collaborate with neighboring governments and broadband enterprises, to leverage resources and efficiencies, including existing fiber optic connections between the Parties, for the benefit of their respective residents and ratepayers; and

WHEREAS, prior to the date of this Agreement, Fort Collins and several of the Affiliates entered into an agreement regarding shared 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 (“Shared Access IGA”); and

WHEREAS, in addition to the Shared Access IGA, the Parties desire to share access to regional telecommunications technical and network support resources, with sufficient capacity and skilled personnel, to resolve customer support issues on each entity’s broadband and telecommunications networks, and to otherwise meet each entity’s commitments to its respective customers; and

WHEREAS, Fort Collins designed and is staffing telecommunications technical support call center data facilities, and the Parties have determined each will conserve resources by temporarily sharing use of such resources, rather than each entity independently building and staffing duplicative facilities; and

WHEREAS, in light of the current cost savings and potential for future coordination and cost saving through this joint operational opportunity, the Parties wish to coordinate efforts to

establish and maintain sufficient telecommunications technical and network support facilities and staff in accordance with the terms of this Agreement; and

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

1. Definitions.

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

“Call Center” and *“Network Operations Center”* (*“NOC”*) is a business office designed to handle a large volume of telephone calls, especially for taking orders and providing computer technical support services, including Tier 1 services as described in Attachment I, attached hereto.

“Customer Support Representative” (*“CSR”*) is a utility system professional delivering non-technical customer service, enrollment, service connection/disconnection ordering, monthly payment, and sales related services.

“Employment Action” includes hiring, firing, performance evaluations, pay rates and benefits (including holidays and other time off), and disciplinary action.

“Engineering Services” includes system support services delivered through a network engineer or other technology professional skilled in maintaining the connectivity of networks in terms of data, voice, calls, videos and wireless network services, and specifically including Tier 3 services as described in Attachment I, attached hereto.

“Enterprise Business” includes businesses that typically have unique architecture or service level requirements that are negotiated with their provider. This may require non-standard levels of services or support.

“Medium Business” includes businesses that typically utilize standardized equipment, pricing plans that include more business-related services and products, and require a higher level of technical support for their business needs.

“Network Engineer” is a technical support professional who focuses on the maintenance of an existing network, whose services and training may extend from testing and troubleshooting problems to regular maintenance, and who contributes high-level support such as strategic planning of network upgrades and high-level network performance analyses, including Tier 3 services as described in Attachment I, attached hereto.

“Network Support Services” includes system support services focused on the maintenance of an existing corporate network, from testing and troubleshooting problems to regular maintenance, specifically including Tier 2 support services as described in Attachment I, attached hereto.

“OSS/BSS” is an integrated computer network designed to deliver “operational” and “billing” services, including enrollment, service connection/disconnection orders, and monthly payment tracking.

“Residential Customers” includes non-commercial customers who obtain service at a residential location.

“Small Business” includes businesses that typically utilize standardized equipment with standardized pricing plans, and require basic technical support for their business needs.

“Technical and Network Support Services” includes Tier 1, Tier 2, and Tier 3 services, as described in Attachment I, attached hereto.

“Technical and Network Support Costs” includes all costs paid to furnish and deliver Technical and Network Support Services, as described in Attachment I, attached hereto.

“Technical Support Representative” (“TSR”) is a technology professional staffing the NOC who is skilled in navigating and maintaining connectivity of network services delivering Tier 1 technical support services.

2. **Term.**

- a. **Term of Agreement.** The Term of the Agreement is from the date first written above until ten years after Fort Collins begins delivery of regional Technical and Network Support services or until this Agreement is terminated, as set forth in b. and c. below (the “Term”).
 - b. **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 each Affiliate’s broadband service director, or designee, shall meet to discuss potential extension and/or amendment of this Agreement and/or integration of the separate Shared Access IGA into this Agreement. Nothing set forth in this Section 2 shall be deemed to delay or otherwise extend the scheduled expiration of the Term.
 - c. **Termination; Removal.** Any party may voluntarily terminate its participation and obligations under this Agreement for convenience upon providing one hundred eighty (180) day written notice to the other parties. Any party may be removed by unanimous written agreement of the other parties upon: (a) unremedied breach of any material term herein or in any attached document after ninety (90) days written notice to breaching party or (b) the failure of the party’s broadband utility to function as a going concern or operate in the ordinary course for more than sixty (60) days.
3. **Fort Collins Call Center.** The Parties shall design, construct, and operate the network facilities set forth in Attachment I during the Term. Specifically, Fort Collins shall design, construct, and staff Technical and Network support facilities as described in this Agreement,

the costs for which are to be shared by the Parties according to Attachment II, attached hereto and incorporated by this reference. The Technical and Network support facilities Fort Collins shall build, lease or otherwise acquire in furtherance of this Agreement shall meet the following minimum specifications:

- a.* Be of sufficient capacity and quality for the Parties to each provide service to their broadband customers for the Term;
- b.* Provide sufficient expertise as to the configuration and practices of the Parties' broadband networks to their broadband customers, as agreed upon by the Parties.
- c.* Initial Technical and Network Support services provided through Fort Collins shall include those set forth in Attachment I following functional components and administrative specifications.
- d.* And as further described under "Services" and "Equipment" portions of Attachment I, attached hereto and incorporated by this reference.

4. Payment for Technical and Network Support. Fort Collins shall directly pay for all Technical and Network Support costs, subject to partial recovery of those costs from Affiliates, as set forth below and further provided in Exhibit A, Attachments II and III, attached hereto and incorporated by this reference.

- a.* During the Term, each Affiliate shall pay Fort Collins for Technical and Network Support Costs in advance on a monthly basis, beginning the first full month following Fort Collins' commencement of regional Technical and Network Support Services as described herein.
- b.* The Parties' respective share of Technical and Network Support Costs shall be determined as follows:
 - i.* Years 1 through 3 of the Term, each Affiliate shall pay a pro-rata amount of Technical and Network Support Costs based on the anticipated number of user accounts on the Affiliate's broadband network, relative to the total number of user accounts with access to Technical and Network support facilities during the period, as initially set forth in Exhibit A, Attachments II and III; and
 - ii.* Years 4 through expiration of the Term, starting in the thirty-fifth month, between November and December of each calendar year during the Term, the anticipated number of user accounts on each party's broadband network will be adjusted for the next year. By November 1, each Affiliate shall submit to Fort Collins an updated estimate of user accounts it will serve for the next year. Such estimate may be refined until December 1, at which time each estimate shall be set and used to schedule pro-rata payments due under this Section 4 during the next year.

- iii. The yearly cost sharing above is based on projections for the following year and assumes the average support services per customer required for each party to be roughly equal. These projections may turn out to be different than actuals and business decisions or demographics may result in more or less time spent per customer. Beginning in January of Year 5 (i.e. the forty-ninth month of the Term) of this Agreement a true up process shall be performed yearly to ensure the Parties equitably share costs:
 1. By January 31, each Affiliate shall submit to Fort Collins the number of actual user accounts served by the Affiliate's broadband network during the prior calendar year along with the percentage difference from the original projection, as determined on December 31.
 2. If an Affiliate's actual number of user accounts for the period differs from the projection used to calculate its pro-rata payments in the period by more than 10%, the Affiliate shall provide notice to Fort Collins of the over or underpayment. The Parties will then engage in a review by February 15 and proportionally adjust payments and credits due for Technical and Network Support Services for the following three pro-rata monthly payments to correct such over or underpayment, unless the Parties mutually agree to a different reconciliation period.

5. Access to Technical and Network support services.

- a. In each party's sole discretion, each party may employ, contract or otherwise acquire additional Technical and Network support resources for its own use or the use of any other party with whom Fort Collins and/or any Affiliates wishes to collaborate. However, each party's financial liability under this Agreement shall only extend to Technical and Network Support Costs as provided in Section 4.
- b. The Parties agree to use good faith efforts to ensure their respective access to and use of Technical and Network Support resources do not unreasonably interfere with any other party's reasonable access and use of such service.
- c. Fort Collins agrees to treat the needs of all Parties, including itself, equally with regard to responding to calls, alarms, network interruptions, and other service needs contemplated by this Agreement. Priority shall be based on a "first come, first serve" principle and based on the severity of the problem, with critical problems taking precedence regardless of the origin. The process for escalating calls and determining priority shall be outlined in a written policy and procedure document maintained by Fort Collins and reviewed and approved quarterly for the first twelve months of the term of this Agreement and at least annually thereafter by the Parties.
- d. All Parties will have access to a method to monitor priority of issues being addressed by Fort Collins.

- e.* Fort Collins agrees to use good faith efforts to ensure minimal Service Level standards (“SLA Terms”) are met as such SLA Terms are set forth in Attachment I attached hereto and incorporated by this reference.
- f.* The Affiliates recognize their respective broadband network users will access the Technical and Network Support Services through facilities and equipment owned by Fort Collins, as the party with immediate obligation to construct and staff regional Technical and Network Support facilities. The Affiliates also recognize they shall not have direct control over such facilities or service calls received by such facilities unless or until service calls are escalated to technical service personnel directly employed by a party other than Fort Collins. Escalation shall occur pursuant to administratively adopted protocols approved by respective broadband service director for each party.
- g.* The Parties agree to maintain system versions in compliance with required vendor support agreements, and to stay within two versions of the most current software version of all supported software.
- h.* The Parties agree to keep and maintain their respective individual fiber networks in good condition. Any physical fiber network issues are outside the scope of this Agreement unless covered under mutual aid provisions.

6. Fort Collins Call Center direction.

- a.* Non-management Call Center personnel. TSRs, NOCs and Network Engineers, as defined in Section 1, shall be employed under this Agreement.
- b.* Training and Communication to Affiliates. Fort Collins agrees to maintain adequate training for all shared staff with regard to individual parties’ systems, customers, and policies so that staff can adequately address problems in a reasonable period of time. Fort Collins agrees that it will provide feedback to an Affiliate if the Affiliate’s processes, programs, or services are found to be increasing call volumes or call times so that the Affiliate can determine if changes need to be made or properly budget for the additional resources being used.
- c.* Call Center Manager. The Fort Collins Call Center, through a Call Center manager (“Call Center Manager”) employed by Fort Collins, shall coordinate and consult with the respective Affiliates’ broadband directors or designees as needed to provide Call Center Services for the Parties’ broadband systems.
 - i.* Such directors or designees may directly request day-to-day work activities of the Call Center Manager, as provided in administrative standards developed by the Parties; however, the Fort Collins Broadband Executive Director is solely authorized to supervise and take all employment actions

related to the Call Center Manager in accordance with Fort Collins city policies. The Fort Collins Broadband Executive Director, or designee, will seek input from the Affiliates' respective broadband directors, or designees, who engage in day-to-day activities with the Call Center Manager; however, the Fort Collins Broadband Executive Director has sole supervisory authority and responsibility for the Call Center Manager.

- ii. The Call Center Manager or designee may direct the day-to-day activities of Call Center employees as necessary to provide Technical and Network Support Services, including coordination with local technical and business services personnel employed by each party, serving the local broadband networks in those jurisdictions. However, each party shall be responsible and solely authorized to take employment action related to employees of that party which may also be recommended by the Call Center Manager. While the Affiliates may seek input of the Call Center Manager, who may direct the day-to-day activity of another party's employee, each Affiliate has sole supervisory authority and responsibility for its employees. The Affiliates shall be entitled to provide formal feedback on an annual basis to Fort Collins regarding the Call Center Manager's performance.
- iii. The Parties acknowledge the Call Center Manager may make recommendations on how the Parties can more efficiently utilize their respective broadband system resources, including equipment, infrastructure and employees. The final decision regarding any changes to any party's resources, including equipment, infrastructure and employees, belongs solely to the party with ownership of such resources.
 1. Call Center Manager Resources. The Call Center Manager may use Fort Collins resources to provide recommendations that may impact the Affiliates' equipment, infrastructure and employee resources, such as making recommended employee schedule and recommended engineering priority changes.
 2. Fort Collins will not be liable for any consequences resulting from any Affiliate's actions accepting such recommendations, except as otherwise provided in this Agreement.
- iv. Replacement of the Call Center Manager.
 1. *By Request of the Affiliate.* Should any Affiliate be unsatisfied with the performance of or desire replacement of the Call Center Manager. The Affiliate shall notify Fort Collins in writing and the Parties shall negotiate in good faith to reach agreement as to appropriate corrective action. Fort Collins shall also be responsible for the replacement of the Call Center Manager or appointment of a new or interim Call Center Manager, as may be required by the Agreement

or upon written agreement of the Parties.

2. *By Fort Collins or By Reason of Unavailability.* Should the Call Center Manager be removed by Fort Collins for any reason or should the Call Center Manager resign or otherwise be unavailable to provide the Technical and Network Support Services, Fort Collins agrees to provide a replacement Call Center Manager as soon as practicable. Fort Collins agrees to provide Technical and Network support to the Affiliates to maintain effective local broadband network operations and the Parties shall only pay for costs incurred by Fort Collins to maintain the effective Technical and Network Support operations until a replacement Call Center Manager is found.
 - d. Overtime.* The Parties agree none of their employees who may have authority to direct the day-to-day operations of employees of another party hereto will require such employees to work overtime, except in an emergency. However, the employing party will have sole authority as to total hours their employees will work.
 - e. Communications and Dispute Resolution.* Each party shall designate a representative as a first point of contact for communications between the Parties regarding the Call Center personnel and/or Technical and Network Support Services. The Affiliates agree to provide regular communications and feedback to Fort Collins regarding the Call Center personnel performance of the Technical and Network Support Services. Should a dispute arise between the Parties, these representatives shall negotiate in good faith to reach a resolution. If a resolution cannot be reached, the issue shall be elevated to the responsible Director, or designee, in the concerned governmental entity and the Fort Collins Broadband Executive Director. If a resolution cannot be reached at this level, the issue shall be elevated to the respective city managers/administrators.
7. **Sharing Information Regarding Technical and Network support Services.** In order to ensure consistent and effective operation of each city's broadband network, the Parties agree to share with each other all useful information regarding the Technical and Network support Services, as necessary and permissible in the discretion of Fort Collins' Broadband Executive Director and respective Affiliate broadband service directors.

Notwithstanding the above, the Parties agree to otherwise treat as confidential (a) all information owned by and/or obtained from 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 Parties shall not disclose such information to any person not having a legitimate need-to-know and approved by the other party, 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 party'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. 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 or as updated in Exhibit A:

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

If to Estes Park: Estes Park, Utilities Director
Town of Estes Park
P.O. Box 1200
Estes Park, CO 80517

With copies to: Town Attorney's Office
Town of Estes Park
P.O. Box 1200
Estes Park, CO 80517

9. Amendment

- a.** Except as provided below, approval of amendments to this Agreement will be

managed according to the respective approval policies of each Party.

- b.* The original parties (Fort Collins, Loveland, and Estes Park) expressly agree to allow mutual administrative approval of amendments at any time to the participating Parties list and notice contacts in Exhibit A; the Service, Equipment and Service Level descriptions in Attachment I; and the Staffing Plan and Proportionate Cost tables in Attachment III. Any change to the Cost Sharing formula in Attachment II or the addition of any other attachment or exhibit to this Agreement shall require approval as set forth in subsection 9.a.

10. Mutual Aid

- a.* Extraordinary Events. The Parties agree in case of an extraordinary event, as determined by the Fort Collins City Manager and the respective city manager/administrator in one of the Affiliates, (the "Extraordinary Event"), a party may request, and a responding party may provide, network support. Extraordinary Events can include, but are not limited to emergencies, natural disasters, special events, or any other event that may increase the demand of broadband services.
- b.* Reimbursement of Extraordinary Events. With respect to each Extraordinary Event, the requesting party agrees to provide appropriate reimbursement for the responding party regarding all costs and expenses incurred by the responding party in supporting the Extraordinary Event, unless otherwise agreed in writing by each party, provided, however, that the party providing network support for the Extraordinary Event maintains auditable records.

11. No Recruitment. During the Term and for six (6) months thereafter, without the prior written consent of the other Party, no Party shall directly solicit or entice away (or seek or attempt to entice away) from the employment of Fort Collins or any Affiliate any person employed (or any person who has been so employed in the preceding six (6) months) by another Party in the provision or receipt of any Tier One or Tier Two services described in this Agreement. For the avoidance of doubt, this Section 11 shall not apply to unsolicited responses by employees to general recruitment advertising.

12. General Terms

- a.* Subject to Appropriation; No Multiple Year Obligation. It is understood and agreed by the Parties that any obligation of Fort Collins or any Affiliate hereunder, whether direct or contingent, shall extend only to funds appropriated by the Parties' respective governing bodies and encumbered for the purpose of this Agreement. The Parties 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 any Affiliate.

- b.* Good faith negotiate/mediate. In the event of any dispute arising out of or in connection with performance under this Agreement, the Parties shall negotiate in good faith. If such negotiations are not successful in resolving the dispute, the dispute will be submitted to proceedings under the Colorado Mediators & Arbitrators™ (COMA) Mediation Rules or other rules agreed to by the Parties.
- c.* Employee Status. Notwithstanding the managerial obligation described in Section 6 above, all employees of each governmental entity who perform any services in relation to this Agreement shall remain the employees solely of the governmental entity employing them to perform such services and not of any other party hereto. No party shall obtain, by virtue of paying or being reimbursed for any personnel costs, any direct control over the management, scheduling or facilities provide to staff at any Technical and/or Network support facility operated by another party.
- d.* 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.
- e.* Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the Parties.
- f.* No Third Party Beneficiary. The Parties 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 Parties. 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 Parties that any person other than the signatory hereto receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- g.* 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.
- h.* 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.
- i.* 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.

- j.* Legal Constraints. The Parties 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 Parties 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.
- k.* Counterparts. This Agreement may be executed in separate counterparts, and the counterparts taken together shall constitute the whole of this Agreement.
- l.* 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 Parties have executed this Agreement as of the date first above written.

City Council for CITY OF FORT COLLINS, COLORADO ATTEST:

By: _____
Mayor

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

CITY OF LOVELAND, COLORADO

ATTEST:

By: _____
City Manager

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

TOWN OF ESTES PARK, COLORADO

ATTEST:

By: _____
Mayor

By: _____
Town Clerk

APPROVED AS TO FORM:

By: _____
Town Attorney

|

EXHIBIT A

Affiliates:

- CITY OF LOVELAND, COLORADO a home-rule municipality (“Loveland”) with principal offices at 500 East 3rd Street Loveland, Colorado 80537
- TOWN OF ESTES PARK, COLORADO, a statutory municipality (“Estes Park”) with principal offices at 170 MacGregor Ave., P.O. Box 1200, Estes Park 80517

Attachment I

A. Services

A combination of TSRs and NOCs will support operations for all Parties 24 hours per day every day during the Term of the Agreement. Support shall be provided based on the following schedule:

- Network Engineer and/or NOC staff will provide after-hours maintenance services from Midnight to 6 am Sunday through Thursday.
- Network Engineering staff will provide support from 8 AM to 5 PM Monday through Friday and shall be on-call, regardless of day and time, for emergencies.

The following support services shall be provided:

- Technical Support Services (TIER 1):
 - Assisting residential & small business customers with internet connectivity issues;
 - Assisting residential & small business customers with managed wifi services;
 - Assisting residential & small business customers with basic phone service issues;
 - Assisting residential & small business customers with video service issues;
 - Escalating unsolved issues to NOC and Engineering Groups;
 - Referring customer service or sales related issues to CSRs or commercial sales;
 - Creating dispatch jobs in the OSS/BSS system;
 - Using and maintaining documentation & configuration in administrative systems.
- Network Operations Services (TIER 2):
 - Handling overflow issues from Technical Support Services;
 - Monitoring network performance and availability;
 - Supporting, managing, and performing network and software upgrades;
 - Troubleshooting and addressing network performance issues;
 - Assisting medium business and enterprise business customers with internet connectivity issues;
 - Assisting medium business and enterprise business customers with managed wifi services on agreed platforms;
 - Assisting medium business and enterprise business customers with phone service and hosted pbx (private branch exchange) issues;
 - Assisting medium business and enterprise business customers with video service issues;
 - Referring customer service or sales related issues back to CSRs or commercial sales;
 - Creating dispatch jobs in the OSS/BSS system;
 - Escalating unsolved issues to Engineering Services personnel;
 - Using and maintaining documentation & configuration in administrative systems.

- Network Engineering Services:
 - Assisting in the design and implementation of network architecture upgrades;
 - Monitoring network performance and availability;
 - Support, manage, and perform agreed upon network and software upgrades;
 - Troubleshoot and address network performance issues;
 - Referring customer service or sales related issues back to CSRs or commercial sales;
 - Creating dispatch jobs in the OSS/BSS system;
 - Escalating unsolved issues to Vendors;
 - Use and maintain documentation & configuration in administrative systems.

B. Equipment

Fort Collins shall provide network operations and technical support services for all Parties 24 hours per day every day during the Term of this Agreement for the equipment described below:

- Nokia EAS and associated equipment and databases;
- The Nokia 7750 DR front end IP unicast and multicast routing as well as subscriber management functionality. The 7750 DR serves as the aggregation point for the access 7360 ISAM GPON OLT;
- The Access Network (AN) consisting of PON network, Layer 2 VLAN Network, based on OLTs, ONTs, Switches, and Routers;
- Administrative ISP Services including managing DNS services, Web services, Cloud Based eMail Services;
- The Internet connectivity provided by redundant ISP connections to the 7750 DR routers;
- Voice services provided by a Momentum/Alianza via connectivity to the 7750 DR routers;
- The MobiTV local channels and caches;
- MobiTV set top box device management systems;
- Emergency Manage System (EAS) system.

C. Service Level Standards

I. Fort Collins Responsibilities. As generally set forth in Sections 5 and 6 of the Agreement, Fort Collins agrees to delivery to customers of all Parties the same quality of above-referenced Network equipment, Technical Support Services, and call center management, as Fort Collins provides for its own customers. These services include the following elements:

- Residential Customer Technical Support
- Account Maintenance and Billing Inquiry Support limited to outage status and the ability to direct customers to CSR and online account access.
- Dispatch for field technicians
- Enter and Monitor Trouble Tickets for supported services and platforms into designated program for each City.
- Trouble Ticket Escalation
- Business Customer Support
- Field Technician Support

- Alarm Monitoring
- Day to Day Operational Support for the Network provided services
- Maintenance Window Support

II. Affiliate Requirements and Responsibilities. As generally set forth in Section 5 of the Agreement, Affiliates agree to secure and maintain the following service elements:

- Residential and Business Customer Service Representative and Billing Services
- Billing and Provisioning Software and support of such software
- Electronic interfaces and systems for System Monitoring and Alarms, Trouble Tickets, Dispatch System, Triple Play Network Element Management Systems, OSS/BSS and other systems as agreed to.
- Current and up to date support agreements for all Equipment listed in Section I of this Attachment.
- Adequately trained on-site staff to perform physical tasks in support of individual networks.
- Remote Support if available
- Budgeting to accommodate refurbishment and replacement of equipment in conjunction and in coordination with the other Cities.

REVISED AS OF: _____

Fort Collins Director: _____

Loveland Director: _____

Estes Park Utilities Director: _____

Attachment II - Cost Sharing

Yearly Cost Sharing

The cost sharing shall be determined by the proportional number of delivery points in relation to a total of all delivery points from all Parties. The number of delivery points shall be calculated using the number of optical network terminals (ONTs) or other service terminating devices projected to be installed within the network of each party within the next twelve months. The proportional value owed by each party shall be calculated yearly. Each party will provide a projected number of delivery points for its network through December 31st of the following year by December 1st of the current year. In addition, each party will provide a five year projection to assist in long term planning, budgeting, and staffing. This will be updated annually with revised projections. Each party will be responsible for a proportionate sum of the total based on this projection.

For example:

Party A - 12,000 Delivery points

Party B - 5,000 Delivery points

Party C - 15,000 Delivery points

Total number for all Parties: 32,000 Delivery Points

Annual cost sharing of \$2,000,000 would be divided as follows:

Party A - 37.5% or \$750,000 annually or \$62,500 monthly

Party B - 15.6% or \$312,000 annually or \$26,000 monthly

Party C - 46.9% or \$938,000 annually or \$78,166.67 monthly

Attachment III - Staffing Plan and Proportionate Costs

Table 1 - Quantity of Staff Needed

Quantity	2020	2021	2022	2023	2024
TSR	8	12	14	15	
NOC	6	6	7	8	
Engineering					

Table 2 - Budgeted Costs for All Staff

Cost	2020	2021	2022	2023	2024
TSR	\$ 695,000	\$ 1,117,550	\$ 1,326,125	\$ 1,456,059	
NOC	\$ 558,000	\$ 586,328	\$ 704,570	\$ 829,380	
Engineering	\$ 126,000	\$ 129,780	\$ 133,673	\$ 137,684	
Total					

Table 3 - Delivery Point Projections for each Party

Delivery Points	2020 Projection	2021 Projection	2022 Projection	2023 Projection	2023 Actual
Fort Collins	18,048	18,048	18,048		
Loveland	12,634	12,634	12,634		
Estes Park	4,200	4,200	4,200		

Table 4 - Percentage Allocation Per Party

Percentage	2020 Projection	2021 Projection	2022 Projection	2023 Projection	2023 Actual
Fort Collins	52%	52%	52%		
Loveland	36%	36%	36%		
Estes Park	12%	12%	12%		

