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Chuck Broerman
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RESOLUTION NO. 19- 355

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

RESOLUTION TO APPROVE INTERGOVERNMENTAL AGREEMENT BETWEEN EL PASO COUNTY AND THE CITY OF WOODLAND PARK FOR THE SHARING OF FIBER OPTIC CABLE IN COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT") CONDUIT ON STATE HIGHWAY 24 RIGHTS-OF-WAY

WHEREAS, Article XIV, Section 18, of the Colorado Constitution, and C.R.S. § 29-1-201, *et seq.*, provide for, and encourage, political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibility by cooperating and contracting with each other; and

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1), 30-11-103 and 30-11-107(1), the Board of County Commissioners of El Paso County, Colorado (hereinafter "BOCC" or "Board") has the legislative authority to make all contracts and to settle all accounts of the County and to exercise such other and further powers as are conferred by law; and

WHEREAS, the County and the Colorado Department of Transportation ("CDOT") have entered into an Intergovernmental Agreement ("County CDOT IGA") in which CDOT will provide non-exclusive access to the State Highway 24 – I-25 to Woodland Park Facility and an Indefeasible Right-to-Use (IRU) 1 CDOT micro duct conduit as determined by CDOT; and

WHEREAS, pursuant to the terms of the County CDOT IGA, the County may make excess capacity available to, provide fiber strands within the County, State Highway 24 fiber optic cable to, or assign in whole or in part the County CDOT IGA to other governmental entities; and

WHEREAS, the County and the City of Woodland Park ("the Parties") desire to share the ownership, costs, and maintenance of a portion of the fiber optic cable as further detailed in the Intergovernmental Agreement ("IGA") between the Parties, attached hereto as Exhibit 1; and

WHEREAS, the Board believes it will serve the public welfare and the citizens of El Paso County to enter into the above-referenced IGA and the provisions therein described.

NOW THEREFORE, BE IT RESOLVED that the Board of County Commissioners of El Paso County, Colorado, hereby authorizes and approves the Intergovernmental Agreement between El Paso County and the City of Woodland Park for the Sharing of Fiber Optic Cable in Colorado Department of Transportation ("CDOT") Conduit on State Highway 24 Rights-of-Way.

BE IT FURTHER RESOLVED, that Mark Waller, duly elected qualified member and Chair of the Board of County Commissioners, or Longinos Gonzalez, Jr., duly elected, qualified member and Vice Chair of the Board of County Commissioners be and is hereby

authorized and appointed on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS 24th day of September, 2019 at Colorado Springs, Colorado.

ATTEST:

By: _____
Chuck Broerman
El Paso County Clerk and Recorder

BOARD OF COUNTY COMMISSIONERS
EL PASO COUNTY, COLORADO

By: _____
Mark Waller, Chair

INTERGOVERNMENTAL AGREEMENT BETWEEN EL PASO COUNTY AND THE CITY OF WOODLAND PARK FOR THE SHARING OF FIBER OPTIC CABLE IN COLORADO DEPARTMENT OF TRANSPORTATION ("CDOT") CONDUIT ON STATE HIGHWAY 24 RIGHTS-OF-WAY

THIS INTERGOVERNMENTAL AGREEMENT BETWEEN EL PASO COUNTY AND THE CITY OF WOODLAND PARK FOR THE SHARING OF FIBER OPTIC CABLE IN CDOT CONDUIT ON STATE HIGHWAY 24 RIGHTS-OF-WAY ("Agreement") is executed this ____ day of _____, 2019, by EL PASO COUNTY, COLORADO, a political subdivision of the State of Colorado ("County") and the City of Woodland Park, Colorado, a home rule city of the State of Colorado ("City") (County and City being singularly referred to as "Party" and jointly referred to as "Parties").

RECITALS

1. The County is a statutory county and political subdivision of the State of Colorado operating pursuant to Title 30, C.R.S; and

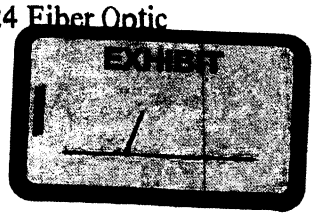
2. The City is organized and operated as a home rule city pursuant to the provisions of Article XX of the Colorado Constitution; and

3. The County has entered into an Intergovernmental Agreement, dated March 21, 2019 ("County CDOT IGA") with CDOT for non-exclusive access to the State Highway 24 corridor Rights-of-Way (ROW) from I-25 (mile point 303.8) to Sundial Drive in Woodland Park (mile point 287.2) (collectively the "SH 24 Corridor – I-25 to Woodland Park Facility") and an Indefeasible Right-to-Use ("IRU") one (1) CDOT micro duct conduit as determined solely by CDOT; and

4. CDOT will also install one hundred forty-four (144) strand single-mode fiber optic cable not less than one hundred-thousand (100K) feet in length (collectively the "County SH 24 Fiber Optic Cable") and ten (10) County pull boxes (the "County SH 24 Pull Boxes") in the SH 24 Corridor – I-25 to Woodland Park Facility; and

5. Under the County CDOT IGA, the County will provide two one hundred sixty-eight (168) strand single-mode fiber optic cables not less than one hundred-thousand (100K) feet in length (one for CDOT's ownership and exclusive use and the second for El Paso County's ownership and exclusive use) and six (6) variable message signs ("VMS") upgrade kits to upgrade the northbound and southbound VMS located between I-25 and Briargate Boulevard to I-25 and South Academy Boulevard (collectively the "VMS Upgrade Kits") as well as 10 pull boxes; and

6. Under Section III (4) of the County CDOT IGA, the County may make excess capacity available to, provide fiber strands within the County SH 24 Fiber Optic



Cable to, or assign in whole or in part the County CDOT IGA to other governmental entities, provided the Parties explicitly acknowledge, affirm and agree to the terms and conditions of the County CDOT IGA; and

7. Under the terms of the County CDOT IGA, the Parties desire to share the ownership, the costs and the maintenance of the one hundred sixty-eight (168) strand single-mode fiber optic cable installed by CDOT in the SH 24 right of way for the County's ownership and exclusive use as set forth in this Agreement; and

8. The Parties believe they both will receive significant benefit entering into this Agreement in order to cooperate and to jointly accomplish activities that will maximize limited public resources and provide enhanced benefit, functionality and economy of scale to each Party, and will accomplish the requirements of the County CDOT IGA in an effective and efficient manner.

NOW THEREFORE, IN CONSIDERATION of the above recitals, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

AGREEMENT

9. Incorporation of County CDOT IGA by Reference and Order of Precedence. The County CDOT IGA, attached hereto as Exhibit A, is incorporated by reference into this Agreement as if set forth herein in full. The City hereby acknowledges, affirms and agrees to the terms and conditions of the County CDOT IGA to the extent they apply to the facilities over which the City will assume ownership under the terms of this Agreement. This Agreement is not an assignment of the County CDOT IGA by the County to the City pursuant to Section XIV(10) of the County CDOT IGA. Rather, it is a grant of excess capacity from the County to the City as described herein pursuant to Section III(4) of the County CDOT IGA. In the event of conflicts or inconsistencies between this Agreement and the County CDOT IGA, the conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

(a) The County CDOT IGA;

(b) This Agreement.

10. City's Obligations. The City herewith agrees to provide to the County:

(a) Funds for two (2) variable message signs ("VMS") upgrade kits ($49,000); and

(b) Funds for two (2) pull boxes ($1,500).

11. County's Obligations. The County herewith agrees to:

(a) Grant to the City ownership of twenty four (24) strands of the one hundred sixty-eight (168) strand fiber optic cables on State Highway 24 corridor Rights-of-Way (ROW) from I-25 (mile point 303.8) to Sundial Drive in Woodland Park (mile point 287.2).

(b) Grant to the City:

(i) Ownership of two Buffer tubes (12 strand bundles each), which shall be number 13 (blue with black stripes) and number 14 (orange with black stripes); and

(ii) Access to ten (10) County pull boxes.

A bill of sale granting the City ownership of the above-referenced facilities shall be delivered to the City upon payment by the City of the amounts set forth in Section 10, above, and installation of such facilities.

12. Maintenance Obligations.

(a) The Parties agree that the provisions of the County CDOT IGA govern maintenance activities on the County's and City's fiber optic cables.

(b) Pursuant to the County CDOT IGA, CDOT will perform all regular, emergency, and extraordinary maintenance activities on the County's and City's fibers.

(c) Pursuant to the County CDOT IGA, CDOT will bill the County for its prorated share of the repair costs based upon repairs to the County's 168 strand fiber cable.

(d) The City agrees to pay its portion of the County's share based upon 24/168 of that cost.

13. Excess Fiber Capacity. The County retains exclusive rights to negotiate and enter into agreements with private sector broadband providers for use of any excess fibers that may be available to the County pursuant to the County CDOT IGA. The City may negotiate and enter into agreements with other entities to utilize excess fibers available to the City pursuant to this Agreement. Parties understand and agree not to directly compete with each other or interfere with operations or agreements of the other when negotiating for the use of their respective excess fiber.

14. Liability. Each Party agrees to be responsible for the acts and omissions of its own employees and/or agents. In the event any claim is made under this Agreement by a Party to this Agreement or a third party, each Party will be responsible

for its own legal representation, expenses of litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any legal defense, immunity, or limitation of liability provided to each Party by law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* and Article XI of the Colorado Constitution.

15. Independent Contractor. The City and the County shall perform their duties hereunder as independent contractors of each other. Neither the City nor any agent or employee of City shall be deemed to be an agent or employee of the County. Neither the County nor any agent or employee of County shall be deemed to be an agent or employee of the City. The City and its employees and agents are not entitled to unemployment insurance or workers' compensation benefits through the County, and the County shall not pay for or otherwise provide such coverage for the City or any of its agents or employees. Unemployment insurance benefits shall be available to the City and its employees and agents only if such coverage is made available by the City or a third party. The City shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The City shall not have authorization, express or implied, to bind the County to any agreement, liability or understanding, except as expressly set forth herein. The City shall:

(a) Provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law,

(b) Provide proof thereof when requested by the County, and

(c) Be solely responsible for its acts and those of its employees and agents.

16. Term, Termination. Subject to the term of the County CDOT IGA, the term of this Agreement shall be through the end of the year in which it is entered, and this Agreement shall be automatically renewed for additional one (1) year terms in perpetuity expressly subject to the limitations in paragraph 17 below. Termination of this Agreement shall not terminate the City's ownership interest in the facilities granted to the City by this Agreement.

17. Appropriations. The appropriations limitations for this Agreement are as follows:

(a) City: This Agreement is expressly made subject to the limitations of the Colorado Constitution and the Woodland Park City Charter. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial

obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither shall such failure nor termination constitute a default or breach of this Agreement, including any sub- agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance or resolution and budget and specifically as to City, which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

(b) County: This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the County, contrary to Article X, § 20, Colo. Const., or any other constitutional or statutory debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the County which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither shall such failure nor termination constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the County.

18. Choice of Laws and Jurisdiction. This Agreement shall be governed by and interpreted in accord with the established laws of the State of Colorado. If any action should arise as the result of a dispute under this Agreement, court jurisdiction shall be exclusively in the El Paso County District Court for the Fourth Judicial District of Colorado.

19. Notices. Any formal notice, demand or request pursuant to this Agreement shall be in writing and shall be deemed properly served, given or made, if delivered in person or sent by certified mail postage prepaid to the Parties at the addresses listed by the signatures below or as otherwise modified pursuant to this Section.

20. Amendments. This Agreement may be amended only by written document signed by the Parties.

21. Severability. In the event that any of the terms, covenants or conditions of this Agreement or their application shall be held invalid as to any person, entity or circumstance by any court having competent jurisdiction, the remainder of this

Agreement and the application in effect of its terms, covenants or conditions to such persons, entities or circumstances shall not be affected thereby.

22. Waiver. The waiver by either Party of any breach by the other of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or other term, covenant, or condition.

23. Entire Agreement. This Agreement embodies the complete agreement between the Parties regarding the subject matter herein and supersedes all prior agreements and understandings, if any.

24. Section Headings. The section headings in this Agreement are inserted for convenience and are not intended to indicate completely or accurately the contents of the Sections they introduce, and shall have no bearing on the construction of the Sections they introduce.

25. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to his Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

26. Duly Authorized Signatories. By execution of this Agreement, the undersigned each individually represent that he or she is duly authorized to execute and deliver this Agreement and that the subject Party shall be bound by the signatory's execution of this Agreement.

27. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, *et seq.*, C.R.S. The Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

EXECUTED as of the date first written above.

CITY OF WOODLAND PARK, COLORADO

By _____
Neil Levy, Mayor

Address: 220 W. South Avenue
Woodland Park, Colorado 80863

Attest:

_____
Suzanne Leclercq, City Clerk

Reviewed By:
_____
City Attorney

COUNTY OF EL PASO, COLORADO

By _____
Mark Waller, Chair, Board of County Commissioners

Address: 200 Cascade Avenue, Suite 100
Colorado Springs, Colorado 80903

Attest:

_____
Chuck Broerman, County Clerk and Recorder