

**INTERGOVERNMENTAL AGREEMENT REGARDING SHARING OF FIBER
CONDUIT and DATA CENTER SPACE BETWEEN THE CITY OF COMMERCE CITY
AND ADAMS COUNTY**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2017, by and between the City of Commerce City, located at 7887 E. 60th Avenue, Commerce City, CO 80022 (hereinafter referred to as the "City") and Adams County Board of County Commissioners, 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 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 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 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. In exchange for the City providing reasonable, limited use of fiber conduit down Hwy 2, subject to the terms of the existing Memorandum of Understanding for a shared regional fiber

infrastructure dated June 12th, 2008, County will provide the City with one server rack in its data center for DR (Disaster Recovery).

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, (iv) utilize available second-party ISP connection (with the permission of the ISP), and (v) 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, provided this provision shall not apply to any board, district, commission, authority, or enterprise related to or operated by, through, or on behalf of the City.
 - 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 or Disruption 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 Center at any time, provided that the replacement space is substantially similar in size and configuration to the original space. The County will coordinate all relocations and any emergency access to the Equipment with City IT staff so that service disruptions are avoided when possible and minimized when unavoidable.
 - f) Space and Power. The County will provide sufficient space for one secure 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, and unescorted card-key access on an as needed basis for the purpose of after hours accesses.
 - h) Security. The County will maintain the County Data Center in compliance with CJIS requirements. The County will provide the City with notice of any deficiency in CJIS compliance.
 - i) 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.
 - j) Clean Space. The City and its Representatives shall keep the County Data Center clean at all times with respect to the City's use of the County Data Center. 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 and Commerce City'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 or licensed 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. **TERMINATION.** Either Party may terminate this Agreement at any time by giving written notice as specified herein to the other party, which notice shall be given at least one hundred and eight (180) days prior to the effective date of the termination. If this Agreement is terminated the Parties shall work together to remove the equipment in a timely manner that avoids or limits any service disruption.
14. **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 Commerce City:
Director of Information Technology
7887 E. 60th Ave
Commerce City, Colorado 80022

- 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 COMMERCE CITY

(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