

**AGREEMENT FOR DESIGNATION OF AGENT
FOR DARK FIBER LEASE AGREEMENTS**

THIS SERVICES AGREEMENT is entered into and effective the _____ day of _____, 2023 by and between **Archuleta County (LOCAL GOVERNMENT)** and the **Southwest Colorado Council of Governments** and the **Region 9 Economic Development District of Southwest Colorado, Inc.** (collectively known as **REGION 9**). The LOCAL GOVERNMENT and REGION 9 may be collectively referred to herein as the "Parties."

RECITALS

The LOCAL GOVERNMENT is a political subdivision of the State of Colorado authorized to act through its elected Board.

The Southwest Colorado Council of Governments ("SWCCOG") is an association of governments, established pursuant to CO. CONST. Art. XIV, §18 and C.R.S. §§ 29-1-201, -401 and -402. The SWCCOG promotes regional cooperation and coordination among local governments and between levels of governments in the geographic area comprising the counties of Archuleta, Dolores, La Plata, Montezuma, and San Juan.

The Region 9 Economic Development District of Southwest Colorado, Inc. ("Region 9") is a Colorado non-profit corporation. Region 9 is a community economic development corporation that promotes and coordinates economic development efforts throughout Southwest Colorado.

Collectively, the Parties recognize the need to improve telecommunication capabilities, capacity, reliability, and availability among REGION 9 member governments, and enhance work completed on the Southwest Colorado Access Network (SCAN) project, which provided initial telecommunication connections; and

The LOCAL GOVERNMENT believes REGION 9 has the personnel and expertise to administer the LOCAL GOVERNMENT's Dark Fiber Lease Agreements ("DFLA") by serving as its designated agent with respect to managing the Dark Fiber Leases with Internet Service Providers ("ISPs"), invoicing and payment collection from the ISPs, and disbursement of identified back funds to the LOCAL GOVERNMENT; and

The LOCAL GOVERNMENT understands that REGION 9 intends to perform these same services for other member governments with respect to the SCAN and future broadband assets.

NOW, THEREFORE in accordance with the above recitals, the LOCAL GOVERNMENT and REGION 9 do hereby agree:

1. PURPOSE

The purpose of this Agreement is to describe the relationship between the LOCAL GOVERNMENT and REGION 9 which replaces any/all previous Dark Fiber Lease Agreements made between the Southwest Colorado Council of Governments (SWCCOG) and the LOCAL GOVERNMENT. This Agreement designates REGION 9 the capacity to administer Dark Fiber Lease Agreements for the LOCAL GOVERNMENT.

2. SERVICES

Parties will perform the responsibilities set forth herein and by reference incorporated as 'Services'.

a) LOCAL GOVERNMENT shall be responsible for:

- (1) Maintenance and operation costs related to its own equipment and dark fiber.
- (2) Identify to REGION 9 the SCAN Dark Fiber Links available for lease and provide signed Service Orders (Exhibit A) of all changes and additions.
- (3) SCAN Dark Fiber Links excluded from REGION 9 invoicing must be itemized. With respect to these excluded SCAN Dark Fiber Links, LOCAL Government agrees to remit to REGION 9, on a quarterly basis, 50% of the proceeds received by the Local Government.
- (4) Provide detailed information to REGION 9 in a timely manner, including as-built plans and updated maps or changes to the Broadband network made by the Local Government or its agents.

LOCAL GOVERNMENT agrees to conduct negotiations for SCAN dark fiber leases only through REGION 9, and to refer to REGION 9 communications received from ISPs with respect to prospective leasing of the SCAN DFLAs during the term and renewal of this Agreement.

b) REGION 9 shall be responsible for:

- (1) Quarterly billing in advance of usage to ISP.
- (2) Semi-annual payments to LOCAL GOVERNMENT.
- (3) Executing and managing DFLAs on behalf of Local Government.
- (4) Providing LOCAL Government with copy of executed DFLAs.
- (5) Disseminating information to the LOCAL GOVERNMENT regarding DFLAs in a timely manner.

3. COSTS

a) Lease Rate

LOCAL GOVERNMENT agrees to lease the SCAN Dark Fiber Links at \$110.00/strand/mile per month, rounded up to the nearest whole number with respect to miles. Non-SCAN Dark Fiber is not bound to the \$110/strand/mile. Changes to this amount may be done through an amendment of the ISP contract. Sixty (60) days notice will be provided.

b) Performance Costs

Each party shall be responsible for its own costs incurred to perform this Agreement, subject

to annual appropriation, unless otherwise agreed to by the parties in writing.

4. EFFECTIVE DATE, TERM AND TERMINATION

The Term for this Agreement shall be from the effective date of this Agreement until modified or terminated. Modifications to the Terms and Conditions may be authorized by written notice by the parties herein and executed as an Amendment to this Agreement.

This Agreement may be terminated without cause by either party by providing ninety (90) days written notice. If this Agreement is terminated prior to the Terms herein, obligations that the parties may otherwise have under this Agreement shall cease immediately upon the written termination date.

5. ACTS OR OMISSIONS

Each party is responsible for damage caused to the other party as a result of acts or omissions of that party's employees, agents, or representatives.

6. GOVERNMENTAL IMMUNITY

The parties hereto do not waive their Governmental immunity.

7. BREACH AND VENUE

Failure of either party to perform in accordance with the Terms of this Agreement shall constitute a breach. Failure to resolve the breach within thirty (30) days written notice shall be grounds for the non-breaching party to terminate this Agreement. Obligations to pay damage or loss, and to indemnify shall survive termination. Disputes concerning the performance or interpretation of this Agreement which cannot be resolved by the designated points shall be referred to the party's Chief Administrative Officer (Town/City/County Manager or REGION 9 Executive Director). If the breach is not resolved within thirty (30) days, either party may pursue litigation exclusively through the District Court of Archuleta County or if federal law applies, in the applicable Colorado Federal District Court.

8. NO SPECIAL DAMAGES

Notwithstanding other provisions hereof, neither party shall be liable for damages due to loss of profits, revenues, goodwill, anticipated savings, data or cost of purchasing, replacement services, or indirect, incidental, special, consequential, exemplary, or punitive damages arising from performance or lack thereof under this Agreement.

This Agreement does not establish a separate legal entity, nor creates an agent for other parties, except as specifically stated herein. The LOCAL GOVERNMENT shall be responsible for installation, maintenance and operation costs related to its own dark fiber equipment, property, and infrastructure. REGION 9 is not responsible for maintenance of the LOCAL GOVERNMENTS dark fiber or associated equipment nor is it liable for damage occurring to LOCAL GOVERNMENT property unless such damage is caused by negligence or intentional misconduct by REGION 9.

9. SUBJECT CONTRACTS

The ISP Agreement (Attachment A) for the LOCAL GOVERNMENT’s DFLAs with the ISPs constitutes the entire understanding and Agreement of the parties with respect to its subject matter. During the term of this Agreement, the LOCAL GOVERNMENT hereby appoints REGION 9, acting by and through its Executive Director, as its designated agent to enter into and execute the DFLAs on behalf of, and binding, the LOCAL GOVERNMENT.

10. PAYMENT AND DISBURSAL OF FUNDS

REGION 9 will disburse 50% of the gross funds received from the ISPs for SCAN Dark Fiber Links to the LOCAL GOVERNMENT and REGION 9 will retain 50% of the gross funds for SCAN Dark Fiber Links in the restricted Broadband account under the SWCCOG, which will be used for Broadband purposes as determined by the SWCCOG Executive Committee and/or the Region 9 Board of Directors, as appropriate. For non-SCAN Dark Fiber Links owned exclusively by LOCAL GOVERNMENT, REGION 9 will disburse 90% of the gross funds received from the ISPs for such non-SCAN Dark Fiber Links to the LOCAL GOVERNMENT and REGION 9 will retain 10% of such gross funds. Payment by REGION 9 to the LOCAL GOVERNMENT shall be semi-annual and in arrears of the receipt of funds. The LOCAL GOVERNMENT may terminate REGION 9 as its designated agent with respect to Dark Fiber Links; however, in such situations, the LOCAL GOVERNMENT shall continue to pay REGION 9 the 50% of revenues generated by SCAN Dark Fiber Leases on a semi-annual basis while retaining the remaining 50% to support regional broadband connectivity. However, LOCAL GOVERNMENT shall retain 100% of the revenues generated from non-SCAN Dark Fiber Links owned exclusively by LOCAL GOVERNMENT should it terminate Region 9 as its designated agent.

11. CONSTRUCTION

The terms, provisions, or conditions herein are subject to and shall be construed in accordance with the provisions of Colorado State law, the parties Charters, and the ordinances and regulations enacted pursuant thereto.

12. SEVERABILITY

If the terms or provisions of this Agreement are, by the courts, held to be illegal or in conflict with State of Colorado laws, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be enforced.

13. ASSIGNMENT

This Agreement may only be assigned with the express written consent of the parties and will thereafter be binding upon the successors.

14. THIRD PARTY BENEFICIARIES

The enforcement of the Terms and Conditions of this Agreement, and rights of action relating to such enforcement, shall be strictly reserved to the named parties hereto. This Agreement does not provide or allow such claim or right of action by additional parties or third persons and is expressly intended that additional parties receiving services or benefits under this Agreement shall be deemed incidental beneficiaries only.

15. NOTICE

Notice or communications required by this Agreement shall be delivered as set forth below:

Notices to LOCAL GOVERNMENT:

Broadband Manager
c/o Pagosa Springs Community
Development Corporation
46 Eaton Drive, Unit 4
Pagosa Springs, CO
(970) 264-3023

Archuleta County Manager
P.O. Box 1507 / 398 Lewis Street

Pagosa Springs, CO 81147
(970) 264-8300

derek.woodman@archuletacounty.org

Notices to REGION 9:

Laura Lewis Marchino
135 Burnett Drive, Unit 1
Durango, CO 81301

laura@region9edd.org

16. AUTHORITY

LOCAL GOVERNMENT represents to REGION 9 the right and authority to enter into this agreement, to enter into the Dark Fiber Link Lease Agreement between LOCAL GOVERNMENT and ISPs, and that the dark fibers links are available for lease except those expressed to REGION 9 by the LOCAL GOVERNMENT.

17. AMENDMENT

No amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by all of the Parties hereto.

18. COUNTERPARTS

This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all of which together shall constitute the same instrument.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT and REGION 9 have caused this Agreement to be executed as of the day and year first above written.

Archuleta County

**Region 9 Economic Development District of
Southwest Colorado, Inc.**

Signature

Signature

Ronnie Maez, Chair
Printed Name, Title

Laura Lewis Marchino, Executive Director
Printed Name, Title

Date

Date

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