

**DARK FIBER LINK (DFL) LEASE AGREEMENT
BETWEEN LOCAL GOVERNMENT AND INTERNET SERVICE PROVIDER**

THIS AGREEMENT is entered into and effective the _____ day of _____, 2023 by and between **Archuleta County (LOCAL GOVERNMENT)**, its designated Agent, the **Southwest Colorado Council of Governments** and the **Region 9 Economic Development District of Southwest Colorado, Inc.** (collectively known as **REGION 9**), and the Internet Service Provider, **Zito Media (ISP)** agrees to the Terms and Conditions of this Lease Agreement (the “Lease”) as stated herein.

1. GENERAL

a) Purpose

The purpose of this Agreement is to describe the relationship between the LOCAL GOVERNMENT and the ISP regarding the lease of the LOCAL GOVERNMENT's optical fiber network and use of the dark fiber links in compliance with this Lease.

b) Definitions

- (1) Internet Service Provider Network - Shall refer to the linked communications system created by the installation of the fiber optic cables, other cables, and wired devices owned by the ISP.
- (2) Dark Fiber Link (DFL) - Single fiber paths from one point to another and have no automatic failover or redundancy. Dedicated fiber(s) create a communication pathway between two Demarcation Points via the LOCAL GOVERNMENT's optical fiber and network facilities. The fibers described herein are dedicated pursuant to the Lease terms.
- (3) Demarcation Point - Shall refer to the connection point between the connector at the end of the Local Government's Network and the mating connector of the ISP's Network. If the mating connector of the ISP's Network is located in a utility pedestal in a public right of way, the Demarcation Point is defined as the dark fiber splice or cross-connect enclosure located in a Local Government manhole.
- (4) Designated Agent - The LOCAL GOVERNMENT's agent with respect administering DFL's and collecting rent payments from ISPs on behalf of the LOCAL GOVERNMENT. The Designated Agent is REGION 9.
- (5) SCAN – Southwest Colorado Access Network fiber optic cables installed in partnership with the Southwest Colorado Council of Governments (SWCCOG)
- (6) Local Government Network - Shall refer to the linked communications system created by the installation of the SCAN or other identified network fiber optic cables, other cables, and wired devices owned by the LOCAL GOVERNMENT.
- (7) Service Order - A document (Exhibit A), approved by the LOCAL GOVERNMENT and ISP, describing the number of Dark Fiber Links desired between identified Demarcation Points and the costs to be charged.

c) Notifications

Notifications of problems or communications required by this Agreement shall be delivered as set forth below:

LOCAL GOVERNMENT:	ISP:	REGION 9:
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Eric Hittle – Broadband Manager	James Rigas, Co-President	Shak Powers or Laura Lewis Marchino
46 Eaton Drive, Unit 4	102 S. Main Street	135 Burnett Drive, Unit 1
Pagosa Springs, CO 81147	Coudersport, PA 16915	Durango, CO 81301
eric@echoitconsult.com	leslie.easton@zitomedia.com	shak@region9edd.org laura@region9edd.org

2. SERVICES

a) Terms and Conditions

(1) Dark Fiber Links (DFLs)

Since DFLs exclude the LOCAL GOVERNMENT provided electronic equipment, these links are not monitored or Network-managed by the LOCAL GOVERNMENT and DFL service is limited to the parameters described herein. If the LOCAL GOVERNMENT fails to meet the service defined, the ISP’s shall allow the LOCAL GOVERNMENT to remedy the deficiencies or the ISP may terminate the Lease in accordance with Section 7. The target available time for DFLs shall be 99.99% of a calendar year. No other remedies or damages, including but not limited to, consequential damages, are available to ISP.

(2) Interruptions and Service Credits

i) Notification of Interruptions

The ISP shall confirm that the ISP Network and Equipment is operational and resolve issues therein. Thereupon, the ISP shall notify the LOCAL GOVERNMENT and REGION 9 of the interruption and the LOCAL GOVERNMENT will create a ticket for repairs, if necessary. The LOCAL GOVERNMENT reserves the right to charge the ISP applicable fees for false alarms.

ii) Service Credit Allowance

A service credit may be granted if the ISP’s DFL service is interrupted, except within which (i) occur during scheduled maintenance or configuration events; (ii) attributable to any application, equipment, system, act or omission of the ISP, the ISP’s employees, contractors, agents or end users; (iii) are caused by Force Majeure or events beyond the LOCAL GOVERNMENT’s control; (iv) are caused by testing or repair delays due to insufficient access to the ISP’s equipment; or (v) extend for four (4) hours or less in duration.

This service credit will be the ISP’s sole and exclusive remedy for service interruption and will be calculated as 1/760th of the monthly rate for each interrupted hour of affected service.

iii) Service Credit Request

The ISP shall submit requests within thirty (30) days after the service interruption and the total shall not exceed the monthly rate for the interruption area. The request must include the ISP’s account number, service address, contact information, description and date of the incident, LOCAL GOVERNMENT’s ticket number, credit amount requested, and the ISP’s calculations. ISP shall mail the request to the LOCAL GOVERNMENT and REGION 9. If

approved by REGION 9 as designated agent and on behalf of the Local Government, the credit shall be applied to the ISP's account within the next billing cycle.

iv) Signal Loss Guarantee

The signal loss on each fiber of the DFL, as tested from one Demarcation Point to the other, using standard OTDR (Optical Time Domain Reflectometer) test equipment set for a test wavelength of 1310 nm (nanometers), shall not exceed the decibel limit specified on the Service Order. If the signal loss of the ISP's DFL service exceeds the Service Order limit for reasons other than a service interruption or the exclusions herein for a period in excess of 48 hours, the ISP may be granted a service credit. This service credit will be the ISP's sole and exclusive remedy for excessive signal loss and will be calculated as 1/760th of the monthly rate for each interrupted hour of affected service.

3. LOCAL GOVERNMENT'S EQUIPMENT

- a) Any equipment provided by the LOCAL GOVERNMENT for the DFL is owned by the LOCAL GOVERNMENT and shall be returned to the LOCAL GOVERNMENT upon termination of the Service.
- b) The ISP shall protect the LOCAL GOVERNMENT premises and equipment and is responsible for any damage to the premises or loss of the LOCAL GOVERNMENT's equipment.
- c) The ISP agrees to return the LOCAL GOVERNMENT equipment within seven (7) days after termination of the Service and pay market value for unreturned parts or equipment. Fair market value will be reasonably determined at the LOCAL GOVERNMENT's sole discretion.

4. RESPONSIBILITIES

- a) LOCAL GOVERNMENT shall:
 - (1) pursuant to the Service Order and Lease Terms, and subject to availability, provide the ISP use of the LOCAL GOVERNMENT's DFL(s) as specifically described in the Service Order.
 - (2) install and maintain the LOCAL GOVERNMENT's Network up to the Demarcation Point.
 - (3) provide the ISP and REGION 9 notice fourteen (14) days prior to scheduled, non-emergency work on the LOCAL GOVERNMENT's Network that may affect the ISP's DFL.
- b) LOCAL GOVERNMENT may contract with a third-party vendor for services to extend the requested number of DFL's to the ISP's location. The contract is intended to establish services only and shall not obligate the LOCAL GOVERNMENT for payment of said services.
- c) ISP shall:
 - (1) be responsible for costs associated with building modifications, conduit, fiber, pullboxes, equipment, and labor for installation in and out of the LOCAL GOVERNMENT's right-of-way to extend DFL's to the ISP's Network by third-party vendor.
 - (2) provide the LOCAL GOVERNMENT and REGION 9 As-built Plans in PDF and GIS file formats on work or changes completed on the existing system.
 - (3) install conduit from the LOCAL GOVERNMENT's pullbox to the ISP's pullbox, provide the LOCAL GOVERNMENT with access to the ISP pullbox from the public right-of-way to the ISP's pullbox.
 - (4) obtain necessary authorizations, including but not limited to, right-of-way and easement permits from the LOCAL GOVERNMENT and property owners to allow the LOCAL GOVERNMENT

to locate, install, maintain, and remove its equipment, cables, and wires in the event of an emergency, ISP's Lease default or Lease termination. The LOCAL GOVERNMENT retains the right to leave in place and continue use of its equipment, cables, and wires beyond termination, until the LOCAL GOVERNMENT decides to remove part or all its equipment, cables, and wires.

- (5) provide access to the LOCAL GOVERNMENT or its designated agent, as requested, for inspection of the ISP's connection frame and equipment for compatibility with the LOCAL GOVERNMENT's Network and usage of resources.
- (6) report outages affecting the DFL immediately to the identified contacts in Section 1(d) of this contract by telephone or email so the LOCAL GOVERNMENT can dispatch a third-party vendor to perform emergency repairs, if deemed necessary. The LOCAL GOVERNMENT will attempt to have the third-party vendor on-site for emergency repairs within four (4) hours and services restored no later than six (6) hours after the fault is identified. The LOCAL GOVERNMENT retains the right to charge the ISP for time and materials expended if the outage is through no fault of the LOCAL GOVERNMENT.

5. PAYMENT

- a) ISP shall pay DFL fees to REGION 9. Lease payments, including sales tax or other fees required by applicable law, shall be in advance and coincide with the Service Order. Late payment fees shall apply in accordance with LOCAL GOVERNMENT policies.

Fee amounts will be identified in each location Service Order (Exhibit A). 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 will be identified through new service orders or an amendment to this Agreement. Sixty (60) days' notice will be provided.

- b) Fees shall be paid through one of the following options:
 - (1) A quarterly paper or electronic invoice for check payment; or
 - (2) Electronic Fund Transfer (EFT) authorizing REGION 9's ACH service to automatically withdraw quarterly charges. This authorization shall be cancelable by the ISPs via 30 days written notice to REGION 9.

6. TERM OF LEASE

- a) The Lease Term is two (2) years, renewing automatically annually. The Lease may be terminated with ninety (90) days' written notice by either party.
- b) If the LOCAL GOVERNMENT or REGION 9 materially defaults in performance or obligation imposed by this Lease, the ISP shall provide written and electronic notice to REGION 9 and the LOCAL GOVERNMENT specifying the default and allow REGION 9 and LOCAL GOVERNMENT thirty (30) days from the notice to rectify the default. Events of material default by the LOCAL GOVERNMENT shall include, but are not limited to, failure to perform duties herein three or more times within any calendar month. If the LOCAL GOVERNMENT or REGION 9 fail to rectify the default within thirty (30) days, the ISP may terminate this Agreement with written notice and will not be obligated to pay any monthly Service charges, beyond the month in which the ISP terminates the Lease.

- c) If the ISP materially defaults in performance or obligation imposed by this lease, REGION 9 on behalf of the LOCAL GOVERNMENT shall provide written and electronic notice specifying the default and allow the ISP thirty (30) days from the notice to rectify the default. If ISP fails to rectify the default within thirty (30) days, REGION 9 or LOCAL GOVERNMENT may suspend or terminate the lease. This shall not release the ISP from monthly payments or other obligations for the remainder of the Lease Term.
- d) Except as provided herein, if the Lease is terminated by either party prior to the completion of the Lease Term, the ISP agrees to pay REGION 9 within seven (7) days any ISP account balance, the fair market value for unreturned equipment, and 70% of the monthly charges for the remaining Lease Term.
- e) The ISP acknowledges that REGION 9 or LOCAL GOVERNMENT may cancel this agreement, in its discretion, upon receipt of a written complaint pursuant to C.R.S. § 29-27-303.

7. DISCLAIMER OF WARRANTIES

The LOCAL GOVERNMENT and REGION 9 exercise no control over the content, accuracy or quality of the information passing through its Network or any products ordered by the ISP via its Network. The information or products obtained by the ISP through the Service are provided "as is". Except as expressly stated in this Agreement, REGION 9 and the LOCAL GOVERNMENT assumes no warranties either expressed or implied regarding the network, including but not limited to, the merchantability or fitness for a particular purpose, compatibility of equipment, or operations free from interruption.

8. LIMITATION OF LIABILITY

In no event shall any party hereto be liable to any other for consequential or special damages arising out of or in relation to this Agreement or the Service, including but not limited to, damages incurred by the ISP resulting from loss of data due to delays, non-deliveries, mis-deliveries, or interruptions in Service, regardless of the cause.

9. INDEMNITY

In no event shall any party hereto be liable to the other for any consequential or special damages arising out of or in relation to this Agreement or the Service, including, but not limited to, damages incurred by ISP resulting from loss of data due to delays, non-deliveries, mis-deliveries, or interruptions in Service, regardless of the cause.

The Local Government and REGION 9 shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of ISP's actions or failures to act in the exercise of the privileges or rights under this Agreement.

ISP shall indemnify, defend and hold harmless REGION 9 and/or Local Government, its officers, agents and employees of and from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, arising out of: negligent or willful acts or omissions of ISP, its agents, officers, directors, employees or contractors; the exercise by ISP of the privileges or rights given herein; and the performance by ISP of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs

incurred by REGION 9 and/or Local Government in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. ISP shall pay any cost that may be incurred by Local Government and/ or REGION 9 in enforcing this indemnity, including reasonable attorney fees. ISP shall indemnify, defend, and hold harmless the Local Government and/or REGION 9 from and against any loss, cost, expense or liability arising out of a claim that ISP's use of its own equipment, software, and the like used by ISP in connection with the Local Government's network or dark fiber, infringes, misappropriates or otherwise violates the intellectual property rights of any third party.

The waivers and disclaimers of liability, releases from liability, exclusive remedy provisions, and (except as expressly stated to the contrary therein) indemnity and hold harmless provisions expressed throughout this Agreement shall apply even in the event of the fault, negligence (in whole or in part), strict liability, or breach of contract of the party released or whose liability is waived, disclaimed, limited, apportioned or fixed by such exclusive remedy provision, or who is indemnified or held harmless, and shall extend to their respective affiliates and its and their respective partners, directors, officers, employees and agents. Such provisions shall continue in full force and effect notwithstanding the completion, termination, suspension, cancellation or rescission of this Agreement, or termination of the rights and privileges granted by this Agreement. No officer, director, employee, agent, or other individual representative of either the Local Government and/or REGION 9 shall be personally responsible for any liability arising under this Agreement.

10. MISCELLANEOUS

a) FORCE MAJEURE

Neither party shall be considered in default of its obligations herein if performance is prevented or delayed by acts of God, government, war, riots, acts of civil disorder, or other such causes beyond such party's control.

b) ASSIGNMENT

No party to this Lease may assign its rights or delegate its duties hereunder, in whole or in part, without the prior, written consent of the other party.

c) GOVERNING LAW

This Lease shall be construed under the State of Colorado and Federal laws. If a breach is unresolved per Section 7, either party may pursue litigation through the District Court of La Plata County or if Federal law applies, in the applicable Colorado Federal District Court.

d) PRIVATE CARRIER SERVICE

This Agreement does not classify the LOCAL GOVERNMENT or REGION 9 as a Telecommunications Company, Telecommunications Carrier, Telecommunications Service Provider, or any other telecommunications entity as defined by Federal or State laws, rules, regulations or administrative orders. This Service is provided as a Private Carrier service.

e) 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.

f) 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, REGION 9 and the ISP have caused this Agreement to be executed as of the day and year first above written.

{LOCAL GOVERNMENT}

Signature

Ronnie Maez, Chair

Printed Name, Title

Date

{ISP}

Signature

James Rigas, Co-President

Printed Name, Title

Date

REGION 9 ECONOMIC DEVELOPMENT DISTRICT OF SOUTHWEST COLORADO, INC.

Signature

Laura Lewis Marchino, Executive Director

Printed Name, Title
