



INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, dated and effective as of this 1st day of May, 2007, is entered into by and between the undersigned municipal corporations, and city and county, each a political subdivision of the State of Colorado, (hereinafter collectively called "Members" or the "parties").

WHEREAS, the parties share similar concerns and objectives with deployment of communications networks to facilitate availability of competitive broadband services within their respective jurisdictions; and

WHEREAS, the parties have concluded that deployment of additional wireless broadband networks will benefit residents, businesses and visitors in that such deployment can result in more consumer choices, better prices, greater availability of services and can additionally provide an incentive to economic development and job retention and growth opportunities; and

WHEREAS, the parties have concluded that deployment of additional wireless broadband networks can also benefit local government operations by providing opportunities for enhancing general local government communications options, reducing costs, and improving public safety communications; and

WHEREAS, the parties each own or control a variety of assets that can be utilized in the deployment of a wireless broadband network; and

WHEREAS, the parties each maintain certain regulatory controls over deployment of wireless broadband networks to the extent that such networks utilize public rights of way, are comprised of facilities that may be located on publicly owned structures, and must comply with local land use regulations; and

WHEREAS, the parties confront many of the same challenges in the allocation of scarce resources to pursuing the goals of encouraging deployment of broadband networks within their respective

jurisdictions; and

WHEREAS, after extensive study the parties have determined that they can best achieve their goals by working together to encourage the private sector to construct and deploy a wireless broadband network throughout each of their jurisdictions; and

WHEREAS, the sharing of resources and information, and the cooperation in the negotiations and ultimate contractual relationship with a private sector communications entity to construct, deploy, operate and maintain a wireless broadband network would benefit the citizenry of each of the parties; and

WHEREAS, the parties desire to coordinate and cooperate in the negotiation, administration and monitoring of an agreement with a private sector entity, and the exercise of their police powers with respect to such a wireless broadband network; to collectively research and study wireless broadband telecommunications matters; and on an ongoing basis to address common concerns, investigate mutual solutions to challenges, and new means of achieving common objectives pertaining to wireless broadband networks in their jurisdictions, so as to increase broadband opportunities for all residents, businesses and visitors, improve efficiency in the management of communications issues and government operations, and to encourage the best possible wireless broadband services to all subscribers within their respective jurisdictions; and

WHEREAS, Sections 29-1-203 and 29-1-401 of the Colorado Revised Statutes authorize political subdivisions of the State of Colorado to cooperate or contract to provide any lawfully authorized function, service or facility or to form and maintain associations to promote, through cooperative effort, the interest and welfare of each.

NOW THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties agree as follows:

1. PURPOSE. The purpose of this Agreement is to share information and resources pertaining to wireless broadband networks, to coordinate and cooperate in the negotiation, administration and monitoring of an agreement with a private sector entity, and the exercise of their police powers with respect to such a wireless broadband network, to investigate mutual solutions to challenges pertaining to wireless broadband networks, and to explore new means of achieving common objectives pertaining to wireless broadband networks in Member jurisdictions, so as to increase broadband opportunities for all residents, businesses and visitors, improve efficiency in the management of communications issues and government operations, and to encourage the best possible wireless broadband services to all subscribers.

2. ESTABLISHMENT OF COLORADO WIRELESS COMMUNITIES. The parties hereby create an intergovernmental entity to be known as the "Colorado Wireless Communities", or "CWC". CWC shall be separate from its Members, but governed by the parties according to the terms hereof. The central communications address and headquarters of CWC shall be 480 South Allison Parkway, Lakewood, Colorado, 80226-3105, initially, although CWC Members may vote following execution to change said address among parties, establish an independent headquarters, or adopt such other practices

or procedures in this regard as they deem fit.

3. DEFINITIONS.

For the purposes of this Agreement the following words, terms and phrases shall have the following meanings.

"Director" shall mean the individual appointed by a Member to be its representative in the CWC.

"Member" shall mean a political subdivision of the State of Colorado, which has entered into and formally executed this Agreement with proper legislative approval. The Board of Directors may provide for different categories of membership.

4. BOARD OF DIRECTORS. Each Member shall appoint one Director to serve on a Board of Directors of the CWC (the "Board") for a 3-year term, and, at its option, up to two alternates, to attend meetings in place of the Director in case the Director is unavailable. References in this Agreement to "the Directors" shall include all Directors and Alternate Directors. The selection and qualifications of each Director shall be within the discretion of each Member; however notice of the initial selection, and any changes or substitutions shall be sent promptly to the CWC at its communications address. Directors shall serve without compensation from the CWC. The CWC shall act through the Board, although the Board may vote to delegate specific authority to the officers of the CWC, or to any executive committee or any special committees the Board may constitute.

5. OFFICERS. The officers of the CWC shall include a president, a vice president, a treasurer, and a secretary, each of whom shall be elected at the annual meeting of the CWC in odd numbered years. New officers shall take office at the adjournment of the annual meeting at which they are elected. The Board may elect an assistant treasurer and/or an assistant secretary, in its discretion.

A. President. The president shall preside at all meetings of the CWC and shall perform all duties incident to the office of president, and such other duties as may be prescribed by the CWC.

B. Vice President. The vice president shall act as president in the absence of the president, and shall have such other duties as may be prescribed by the CWC.

C. Secretary. The secretary shall be responsible for keeping a record of all of the proceedings of the CWC, preparing and circulating minutes and agenda, facilitating communications, and arranging and giving notice of the meetings.

D. Treasurer. The treasurer shall have custody of the CWC funds, pay its bills, keep its financial records and generally conduct its financial affairs. The qualifications of the treasurer and other requirements shall be as prescribed by the CWC.

6. VOTING. Each Member in good standing shall have one vote. There shall be no voting by

proxy; all votes must be cast in person at CWC meetings by a Director from a Member's Director, or such Director's alternate, except as otherwise may be provided in the Bylaws. Directors shall not be eligible to vote on behalf of any Member during the time that the Member is in default on any contribution or payment owed to the CWC. A quorum of no less than one-half plus one of the Members currently in good standing shall be necessary for the conduct of CWC business. Decisions of the CWC shall be by a majority vote of those Member Directors present at a duly called meeting.

7. BYLAWS. The CWC Board of Directors shall have the authority to adopt bylaws governing the conduct of the CWC, its meetings, and communications and interaction among the Members.

8. FINANCES.

A. Operating Budget. The Treasurer shall prepare an operating budget (the "Operating Budget") by October 1st of each year this Agreement is in effect. The Operating Budget shall set forth anticipated expenses, financing sources, and proposed service levels necessary to carry out the purpose of this Agreement, and shall be adopted and filed in accordance with applicable law. The Operating Budget shall take effect the following fiscal year, beginning on January 1st. Directors shall vote to approve any Operating Budget according to the voting procedures set forth in Section 6, above. Each Member shall have the right to refuse to pay that Member's assessment and withdraw from the CWC by giving notice of withdrawal as provided in Section 12.

B. Contribution.

(i) Member contributions with regard to the Operating Budget shall be apportioned by population category. The Member contributions for 2007 and the anticipated contributions for 2008 through 2012 (subject to modification by the Board) are as follows:

<u>Population Range</u>	<u>#CWC Members</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
0 – 2,499	0	\$1,080	\$700	\$400	\$400	\$400	\$400
2,500 – 4,999	0	\$2,160	\$1,400	\$800	\$800	\$800	\$800
5,000 – 9,999	0	\$3,240	\$2,100	\$1,200	\$1,200	\$1,200	\$1,200
10,000 – 14,999	1	\$4,320	\$2,800	\$1,600	\$1,600	\$1,600	\$1,600
15,000 – 24,999	2	\$5,400	\$3,500	\$2,000	\$2,000	\$2,000	\$2,000
25,000 – 49,999	3	\$10,800	\$7,000	\$4,000	\$4,000	\$4,000	\$4,000
50,000 – 74,999	0	\$16,200	\$10,500	\$6,000	\$6,000	\$6,000	\$6,000
75,000 and over	4	\$21,600	\$14,000	\$8,000	\$8,000	\$8,000	\$8,000

(ii) With the approval of the Board, Members may be credited for the monetary value of any personnel time, equipment or facilities used by the CWC, or for other non-cash contributions that benefit the CWC as a whole.

(iii) The failure of any Member to pay its contribution to the approved Operating Budget by

January 31st of the applicable fiscal year shall be considered a default for the purposes of this Agreement, and such Members shall be considered no longer in good standing for all the purposes of this Agreement until paid in full. All Members as of January 1st in a given year (i.e., Members who have not submitted a notice of withdrawal pursuant to Paragraph 12 or who have not had their membership terminated pursuant to Paragraph 13) shall be obligated for the full amount of its annual contribution for that year, regardless of whether such membership is terminated for any reason during the course of the year.

9. POWERS. The CWC shall have the power to conduct research, communicate with individual Members, address issues on behalf of the CWC to legislative bodies or government agencies, and to take whatever measures the Board deems necessary to accomplish the CWC's purposes as set forth in Section 1 above. The CWC shall further have the power to maintain and utilize assets purchased with Member contributions, and funds contributed to the CWC according to the terms of this Agreement. The CWC additionally has the power to perform duties which include, but are not limited to working cooperatively among its Member jurisdictions to standardize permit forms, application processes, review, authorization and management of permits in order to facilitate to purposes and goals of the CWC. The CWC is hereby authorized by the Members to do all that is necessary for the exercise of its powers within the constraints of the approved Operating Budget, including, but not limited to any or all of the following: hiring employees or consultants, entering into contracts, acquiring, holding or disposing of property, incurring liabilities or obligations within the limits of any applicable law required by the exercise of these powers, authorizing and approving budgets and financial expenditures, and such other powers as are prescribed by the Members hereof.

10. MEETINGS.

A. Regular Meetings. Regular meetings of the CWC shall be held as determined by a majority vote of the Board.

B. Special Meetings. Special meetings of the CWC may be called by (1) the president, or (2) the secretary upon the written request of at least three Directors. One week's written notice of a special meeting, and the subject matter of that meeting, shall be given to the Directors.

C. Notice. The Secretary shall give notice of CWC meetings to the Directors at least one week in advance and additionally as directed by the Members. When feasible, the agenda for such meetings, and the minutes of the previous meeting, shall accompany such notice. Discussion at regular meetings of the CWC need not be limited to matters set forth in the agenda.

D. Executive Sessions. All meetings shall be open to the public as provided in the Colorado Open Meetings Law, C.R.S. 24-6-401 *et seq.*, or any successor statute thereto, unless a vote of two-thirds of the entire membership votes to hold a closed executive session for the purposes, and in accordance with the procedures, set forth in the Open Meetings Law or any successor statute thereto.

11. NEW MEMBERS. After the effective date of this Agreement, additional governmental entities may become Members of the CWC upon application to, and approval by, the Board of Directors. Approval of new Members shall require an affirmative vote of two thirds (2/3) of the then existing Members. Approval by the Board of additional members shall be conditioned upon the following:

A. Reimbursement. Reimbursement by the new Members of the CWC for the expenses of the CWC resulting from addition of the new Member, including, but not limited to, reasonable attorneys' fees, consultants' fees, accountants' fees, engineering fees and all other such reasonable out-of-pocket expenses as may be incurred.

B. Adoption. Adoption by the duly elected governing body of the new Member of this Agreement in accordance with applicable law, so as to permit the new Member to participate in the CWC, and the CWC to operate, in a manner that is consistent with this Agreement and any adopted Bylaws.

C. Compliance. Compliance by the new Member with such other conditions as may be determined appropriate by the Board of Directors before such new member is admitted as a Member of the CWC. Compliance may include, in the Board's discretion, payment to CWC to compensate for the costs incurred in developing any contracts, other operational documents, or programs or opportunities involving wireless broadband communications that provide a benefit to CWC communities.

D. Eligibility. Other governmental entities within the State of Colorado with interests in wireless broadband communications shall be eligible to become Members in the CWC.

12. WITHDRAWAL. Any Member may withdraw from this Agreement by filing written notice of its intention to do so with the central communications address of the CWC and each of the other Members. Termination will take effect for the purposes of contributions on January 1st of any year, provided there is at least three weeks advance notice. The withdrawal of any Member from this Agreement shall in no way affect the rights and obligations of the remaining Members, except as agreed upon between the remaining Members. Members withdrawing from this Agreement are not entitled to the return of any funds contributed to the CWC for the Operating Budget, or to the return of any materials or supplies contributed to the CWC.

13. TERMINATION AND DISPOSITION OF PROPERTY. This Agreement shall be deemed terminated when only one Member continues to participate in the CWC, or when all participating Members choose to terminate it. Upon termination, all assets and the remainder of the Operating Budget shall be distributed to the Members still active at the time of termination or continuing to participate on a pro rata basis and in proportion to each Member's financial participation during the prior fiscal year.

14. COOPERATION AND PUBLIC CHARGE. The parties hereby agree that they shall cooperate so far as possible within the constraints of applicable law to effectuate the intent of this Agreement. Members are encouraged but shall not be required to contribute available personnel or employee time, and other available resources without cost to the CWC. The CWC shall at all times act within conformity with all applicable laws, statutes and regulations, including equal opportunity

provisions, and Members and their Directors agree that they will make decisions and act in accordance with the public interest, so as to best benefit their citizens and subscribers of broadband services.

15. EFFECTIVE DATE AND TERM. This Agreement shall become effective when it has been duly authorized by at least three of the parties and executed originals of this Agreement and other appropriate documents evidencing such approval, have been filed at the central communications address of the CWC with copies to the other Members as provided above. This Agreement shall continue in effect through December 31st following the effective date and thereafter from year-to-year, or until termination in accordance with the terms hereof.

16. INSURANCE AND HOLD HARMLESS. CWC Directors shall serve as part of their regular job responsibilities as employees of CWC's individual Member jurisdictions, and as such, are covered by the insurance provided by their employers. No Member, and no Director, shall be liable for claims because of participation in, or as the result of any action or omission by, the CWC. Without waiving the protections, rights and limitations of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*, and any other applicable laws, where appropriate, the individual Member jurisdictions shall, defend and indemnify Members and Directors against any and all claims, judgments, losses, demands, and costs in any way arising out of this Agreement to the extent such claims, judgments, losses, demands and costs are not barred by the Colorado Governmental Immunity Act and any other applicable laws. The CWC shall be responsible for any insurance necessary for its operation relating to assets owned, liabilities incurred and/or employees retained by the CWC, independent of the individual Member jurisdictions. In so doing, the CWC does not waive the protections, rights and limitations of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.* and any other applicable laws.

17. SEVERABILITY. Should any part, term, or provision of this Agreement be declared to be illegal or in conflict with any law whatsoever, or otherwise rendered unenforceable or ineffectual, by any agency or court of competent jurisdiction, the remaining portions of this Agreement shall nonetheless remain in effect and the Members each agree that they would have entered into each provision of this Agreement separately even if none of the other provisions had been included.

18. AMENDMENT. This Agreement may be amended by the two-thirds majority vote of the entire membership, based upon each Member being entitled to one vote.

19. REPORTING AND RECORD KEEPING. The CWC shall report all proposed amendments of this Agreement or any bylaws promulgated pursuant to this Agreement, any Meeting changes, changes in budget, and any information important to the operation of this Agreement to the Directors of each Member promptly. All documents required to be made available under any local, state, or federal law or regulation shall be deposited at the central communications address as set forth in Section 2, above. The procedures and responsibilities for responding to any open records requests under Colorado law shall be addressed in the Bylaws. To the extent required by applicable law, the Board shall engage an independent accounting firm to perform an annual audit of the budget of the CWC, which audit shall be distributed to each Member in summary form. All such documents and any and all documents maintained by, or pertaining to, the CWC shall be available upon reasonable notice for inspection by any Member.

20. NO THIRD PARTY BENEFICIARIES. Nothing in this Agreement shall give rise to any rights or allow any claim by any third party. It is the express intention of the Parties that any third party receiving benefits from this Agreement shall be deemed an incidental beneficiary only.

21. VENUE. Any legal action brought pursuant to this Agreement shall be proper in the City and County of Denver.

22. NO MULTIPLE-YEAR FISCAL OBLIGATION. The obligations of the Members to contribute to the Operating Budget are specifically conditioned upon annual appropriation of funds for the same at the legislative discretion of the governing body of each Member. No Member is hereby obligated to make any such appropriation, and no multiple-year fiscal obligation of any Member, within the meaning of Article X, Section 20 of the Colorado Constitution, is created or implied in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement below on the date first above written.

(CITY/AND COUNTY/TOWN) OF _____,
COLORADO

By: _____
Title: _____

ATTEST:

APPROVED AS TO FORM:
