



SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS

Regular Meeting Agenda

Thursday, 5 January 2017, 1:30pm – 4:00pm

1188 E 2nd Ave., Durango CO

- I. Introductions
- II. Consent Agenda
 - a. 2 December 2016 SWCCOG Meeting Minutes
 - b. November 2016 Financials
- III. Reports (Staff will be available for questions on the written reports)
 - a. Director's Report
 - b. Broadband Report
 - c. Transportation Report
 - d. VISTA Report
 - e. Community Updates
- IV. Discussion Items
- V. Decision Items
 - a. Executive Committee Meeting Minutes
 - b. DoLA 2017 TA Grant Contract
 - c. MidState Consulting (e-TICS) Contract
- VI. Other Items

Video/Phone Conference Info:

<https://zoom.us/j/501744447>

1-646-558-8656, Meeting ID: 501 744 447

Consent Agenda

**Southwest Colorado Council of Governments
December Board Meeting
Friday, 2 December, 1:30pm
1188 E. 2nd Ave., Carnegie Building, Durango, CO 81301**

In Attendance:

Andrea Phillips – Town of Mancos
Dick White – City of Durango
William Tookey – San Juan County (via video)
Chris Tookey – Town of Silverton (via video)
John Egan – Town of Pagosa Springs
Chris La May – Town of Bayfield
Michelle Yost – Town of Bayfield
Julie Westendorff – La Plata County
Shane Hale – City of Cortez

Staff in Attendance:

Miriam Gillow-Wiles – Southwest Colorado Council of Governments
Jessica Laitsch – Southwest Colorado Council of Governments
Dennis Wegienek – Southwest Colorado Council of Governments
Sara Trujillo – Southwest Colorado Council of Governments (via video)

Guests in Attendance:

Laura Lewis Marchino – Region 9
Ann McCoy-Harold – Senator Gardner’s Office
Jim Ostrem – Town of Rico (via video)
Darlene Marcus – Representative Tipton’s Office

a. Introductions

The meeting was called to order at 1:35 p.m., new attendees introduced themselves.

b. CPACE Presentation – Laura Lewis Marchino

Laura Lewis Marchino presented on the current happenings of CPACE. CPACE is a way to fund clean energy, water improvements, and energy efficiency projects for businesses. It works by creating a system in which businesses agree to a voluntary assessment that comes up on their property tax bill, and they receive a loan for their project. The goal of this program is to raise property values, create jobs, increase tax revenue, and lead to environmentally friendly development. This program would help businesses because they wouldn’t have to put money down for their development, and the energy savings could offset the cost of paying off the loans. If the loans turn out to be larger than Region 9 can handle, then they would work with local commercial lenders. Laura then asked if any of the municipalities or counties were intrigued by the program. Michelle thinks this would be a great program that could benefit several businesses in her community. Laura added that Region 9 could meet with communities individually. The anticipated impact of this program is mostly dependent on the interest and participation of businesses. Dick mentioned that the PACE programs have been around for six or eight years, in communities that are really ambitious about their energy goals. He also says one of the major obstacles is the up-front cost. Residential PACE has been held back because the guidelines were strict, but they are starting to loosen up now. Dick continued that commercial PACE does not have this problem and that it is a no-lose proposition. He added that this program isn’t limited to energy costs, but rather any overhead costs. Every individual would

need to determine whether this is cost effective or not. Dick concluded that this is a terrific mechanism. Laura replied with more information about potential projects that qualify. These projects include but are not limited to lighting, heating, solar, for offices, industrial, or non-profits.

Laura also brought up the Rural Jumpstart Program. It is a state program that is being utilized, and it might be a detriment if we don't pursue it. It is a tax holiday for businesses that want to move to Colorado. Laura clarified that it has nothing to do with existing businesses, rather if a business moves to a participating county they do not have to pay taxes for four years. This was created with the idea that governments wouldn't have that tax revenue in the first place if the business was in a different state/county. The business has to create a minimum of 5 jobs and they can't be competing with existing businesses. Additionally, participating counties must meet certain criteria such as having a population under 250,000 (rural), and the county must be considered "distressed." With that last point in mind, La Plata County is not eligible, however the other four counties are eligible. Counties can be approved, and communities can choose to opt out.

Andrea asked if a community can do it without its county, and Laura answered it cannot. Julie asked if it was a holiday from property tax. Laura answered that it was a holiday from both property and sales tax. Laura continued by saying a reason for this program's creation is because the state is thriving in urban areas but not rural areas, and this is a way to serve rural communities. There is an application process that includes a non-compete evaluation. The business has to have a plan for job creation, and if they don't follow through they can be kicked off the program. Julie asked if there are criteria for the quality of jobs. Laura replied that wages etc. are considered before businesses qualify. Laura added that this program works through the economic development organizations and Region 9 would assume the responsibilities of ensuring the incoming business is not competing. Julie asked if CPACE brings additional costs to the administrative side of things or if it adds additional costs to the treasurer's office to account for tax credits etc. Laura answered that compensation is accounted for in the program. Julie asked for the clarification of what a "distressed" community is. Laura answered that it based off of state averages for per capita income, unemployment rate, population etc.

c. Consent Agenda

- a. 4 November 2016 SWCCOG Meeting Minutes
- b. October 2016 Financials

Julie proposed three amendments to the November meeting minutes. Julie clarified that none of the changes were substantive. The proposed amendments are, 1. Karen Iverson (RHA) mentioned "the four county region", we should clarify the four counties Karen was referring to did not include Dolores County. 2. In the broadband presentation, there was a reference to a wrap up meeting being scheduled for November 21st, but in reality it is scheduled for December 8th. The third amendment was for a small typo at the end of the minutes.

Shane Hale motioned to approve the consent agenda, Dick White seconded, unanimously approved.

d. Reports

Director's Report

Miriam got more information about TPR dues after the board packet was sent out. Because CDOT provides funding they are voluntary contributions, not dues. Miriam then mentioned Montezuma County's changing dues for TPR, they sent a letter saying they are cutting their dues by 10%, or \$85 when their dues were originally \$837 not \$850. As a result, they are

actually cutting their funding by \$83.70 or 10%. Because TPR dues are voluntary Montezuma County can do this.

Julie asked why anyone contributes. Miriam answered CDOT provided much more funding in the beginning than they do now, and the contributions help cover additional costs like travel, food, and incidentals that federal funding from CDOT does not cover.

Julie asked if this was discussed at TPR Miriam replied that it was not. Miriam continued that she talked to Keenan at TPR and he said that Montezuma County is doing this across the board because they have a budget deficit of almost \$1.3 million. She added that Keenan pledged to return to their original funding amount once the budget issue is resolved. Miriam added that there is no recourse for the SWCCOG or TPR, because the dues are actually voluntary contributions, and that terminology has been updated in the contracts. Miriam then mentioned that Keenan Ertel was voted in as the Vice-chair of TPR for 2017.

Dick expressed some concern over the potential loss of funding for TPR and Miriam replied that she had expressed that to CDOT that as well. Mike King at CDOT has told her that we could request additional funding. We get the most funding of any TPR in the region because we are the farthest from Denver and often have to fly people there for the STAC meetings. Shane is concerned that this is unfair, and asked what would happen if his community only paid the same percentage share and if there was a 10% reduction across the board. Miriam answered that it would reduce revenue by close to \$700. There was then some discussion about how changes in TPR funds would impact the TPR and SWCCOG. There are no immediate concerns because we can request additional funds from CDOT. There were further suggestions that the SWCCOG should inform TPR that if TPR funds are cut, the COG will not be responsible for making up the funds. This fact is supported by the contract that has been agreed upon with the TPR.

Miriam mentioned some delays with DOLA 9038 referring to the 2016 Technical Assistance grant. The COG requested an amendment to allow staff time to be charged to this grant earlier in the fall. DOLA has yet to decide officially, and as a result we do not know what to charge to the grant, and we have not completed a full draw down request. Miriam then requested an extension for the grant.

Broadband Report

The broadband planning meeting will be held on December 8th, 2016. There was then a discussion about rescheduling the broadband planning meeting to January. Miriam will look into rescheduling with Diane.

Transit Report

A new TPR chair and vice chair were elected. Bentley is the chair and Keenan is the vice chair. The MOU with the COG was renewed.

VISTA Report

Dennis discussed the recycling website, including slight changes to content and the inclusion of additional composting information. The website has been published, but small changes are still being made as other industry professionals weigh in.

Community Updates

Andrea said the CCCMA Conference dates have changed for January 25-28 in Glenwood Springs.

Julie shared that Samson has been acquired by a local Native American tribe and accordingly their tax contributions will be removed from La Plata County; they were the second largest source of tax revenue in the county.

Dick mentioned Noel Night. He continued to discuss the Durango trends of tax revenue. Durango is feeling the fallout from the gas patch. There may be discussions regarding an increase in sales tax during 2017.

e. Discussion Items

f. Decision Items

a. October 2016 Executive Committee Meeting Minutes

Andrea said the notes from October 19th 2016 Executive Committee Meeting were fine. No approval was needed as Andrea was the only one in attendance.

Julie wanted to update a couple of typos and unclear information. Miriam replied that staff would clean up the minutes and bring them back next month for approval.

Motioned to continue October 31st 2016 Executive Committee Meeting Minutes. Julie motioned, John seconded, unanimously approved.

b. SWCCOG – SWTPR Contract

Andrea said the TPR approved the MOU earlier this morning. It would be in place for three years. Miriam clarified that TPR is a colloquial name, and in the state statutes it is Regional Transportation Planning Commission. That is why it says RTPC on the contract.

Michelle motioned to approve the agreement between the SWTPR and the COG (MOU), John seconded, unanimously approved.

c. Decision to Contract for Services with RHA

There was a brief discussion about the contents of the contract for services with the RHA and the work required of the COG for this partnership.

Dick motioned to authorize staff to move forward and develop a contract with RHA, Michelle seconded, unanimously approved.

d. 2017 SWCCOG Treasurer Selection

Shane recommends Chris La May as the incoming treasurer.

Shane motioned to appoint Chris La May as Treasurer, John Egan as Vice Chair, and Julie Westendorff as Chair for 2017. Dick White seconded, and it was unanimously approved.

Julie motioned to amend the agenda to include considerations for the extension of DOLA 9038 Technical Assistance grant, Dick seconded, unanimously approved.

e. DOLA 9038 Technical Assistance Grant.

Dick motioned to authorize the staff to move forward with extension of DOLA 9038 Technical Assistance grant, John seconded, unanimously approved.

Shane motioned to move to executive session, John seconded the motion, unanimously approved.

Moved to Executive Session at 2:38 p.m.

f. Executive Session: Executive Director Evaluation Overview and Merit Raise
For discussion of a personnel matter under CRS Section 24-6-402(2)(f) and NOT involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees.

Returned to open session from the Executive Session at 2:57 p.m.

Dick asked to clarify the differences between the monthly financial reports and the quarterly financial reports. This shifted to a discussion about the most effective ways to report information to the board.

There was a brief discussion about short term objectives for the transition into 2017. These objectives included potential new COG board members, and planning visits to member communities.

Shane motioned to approve the three percent pay raise for the Executive Director, Michelle seconded, unanimously approved.

End 3:12 p.m.

November 2016 Financials

To: SWCCOG Board of Directors
From: Sara Trujillo
Date: 5 January 2017

Comments: The following attachments include:

- November 2016 Balance Sheet
- November 2016 Profit & Loss
- January – November 2016 Profit & Loss Budget vs. Actual

Items to Note:

- Balance Sheet: Accounts Receivable shows a balance of \$26,016.98 of which \$4,079 is currently being held as retainage until grant final reports are submitted from the RREO and DoLA 8010 Broadband grants. All other outstanding invoices are within 30 days with none overdue.
- Profit and Loss: A -\$13,898.38 Net Income is shown for November, which is normal for reimbursement grants as money is spent before reimbursement is received.

Fiscal Impact: High, Budget changes throughout the year

Staff Recommendation: Approve the November 2016 Financials

Legal Review: Not Applicable

Southwest Colorado Council of Governments

Balance Sheet

As of November 30, 2016

	Nov 30, 16
ASSETS	
Current Assets	
Checking/Savings	
Alpine Bank	
Alpine Bank Account (UR)	86,021.20
Fiber Equip Fund - Restricted	9,754.41
Total Alpine Bank	95,775.61
Petty Cash	
AmeriCorps VISTA	362.60
Jessica Laitsch	331.05
Petty Cash - Other	29.07
Total Petty Cash	722.72
Total Checking/Savings	96,498.33
Accounts Receivable	
Accounts Receivable	26,016.98
Total Accounts Receivable	26,016.98
Total Current Assets	122,515.31
TOTAL ASSETS	122,515.31
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Credit Cards	
Credit Cards	
Miriam	5.00
Sara	4,009.55
Total Credit Cards	4,014.55
Total Current Liabilities	4,014.55
Total Liabilities	4,014.55
Equity	
Retained Earnings	90,499.80
Net Income	28,000.96
Total Equity	118,500.76
TOTAL LIABILITIES & EQUITY	122,515.31

Southwest Colorado Council of Governments

Profit & Loss

November 2016

	Nov 16
Ordinary Income/Expense	
Income	
CDOT Grants	
SWTPR Grant	579.76
Transit LCC Grant	417.00
Total CDOT Grants	996.76
DoLA Grants	
DoLA 9038	1,875.00
Total DoLA Grants	1,875.00
Misc. Income	971.91
Total Income	3,843.67
Gross Profit	3,843.67
Expense	
All Hazards Projects	
All Hazards 2015 SHSP	
Grant 2015 Project 1	1,281.03
Total All Hazards 2015 SHSP	1,281.03
Total All Hazards Projects	1,281.03
Consulting	552.50
Information Technology (IT)	
Software	5.00
Total Information Technology (IT)	5.00
Insurance Expense	
Health	1,828.00
Total Insurance Expense	1,828.00
Internet Connectivity	
Fast Track	900.00
Internet Connection (AT&T)	32.17
Total Internet Connectivity	932.17
Meetings	-20.00
Professional Fees	
Legal	331.20
Total Professional Fees	331.20
Rent	87.00

Southwest Colorado Council of Governments

Profit & Loss

November 2016

	<u>Nov 16</u>
Salary and Wages	
457 Retirement	270.38
Car Allowance	300.00
Cell Phone Allowance	195.00
Payroll Processing Fee	99.72
Payroll Tax	817.58
Salary and Wages - Other	10,470.30
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Total Salary and Wages	12,152.98
Travel	592.17
	<hr/>
Total Expense	17,742.05
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Net Ordinary Income	-13,898.38
	<hr/>
Net Income	<u><u>-13,898.38</u></u>

Southwest Colorado Council of Governments
Profit & Loss Budget vs. Actual
 January through November 2016

	Jan - Nov 16	Budget	% of Budget
Ordinary Income/Expense			
Income			
All Hazards			
2014 SHSP	23,733.66		
2015 SHSP	69,964.33		
All Hazards - Other	0.00	203,803.00	0.0%
Total All Hazards	93,697.99	203,803.00	46.0%
CDOT Grants			
SWTPR Grant	17,410.90	21,100.00	82.5%
Transit LCC Grant	16,796.02	20,000.00	84.0%
Total CDOT Grants	34,206.92	41,100.00	83.2%
DoLA Grants			
DoLA 7645	40,747.05		
DoLA 8010	71,801.91		
DoLA 8011	35,596.82		
DoLA 9038	21,676.33		
DoLA Grants - Other	0.00	350,000.00	0.0%
Total DoLA Grants	169,822.11	350,000.00	48.5%
Dues Revenue			
Admin Position	12,347.00	12,200.00	101.2%
COG Dues	115,363.00	114,000.00	101.2%
SWTPR Dues	7,679.00	7,679.00	100.0%
Total Dues Revenue	135,389.00	133,879.00	101.1%
Grant Match			
COG Member Match	6,836.42	6,000.00	113.9%
Non-COG Member Match	12,223.00		
Total Grant Match	19,059.42	6,000.00	317.7%
Misc. Expense	15,850.89		
Misc. Income	12,337.32		
RREO Grant			
RREO 2016-2017	6,579.59		
RREO Grant - Other	0.00	36,200.00	0.0%
Total RREO Grant	6,579.59	36,200.00	18.2%
SCAN Services			
Dark Fiber Leasing	20,256.00	20,560.00	98.5%
e-TICS	8,400.00	8,400.00	100.0%
Fiber Equipment Repair Fund	9,754.00	15,000.00	65.0%
Internet & Transport	8,280.00	8,280.00	100.0%
Total SCAN Services	46,690.00	52,240.00	89.4%

Southwest Colorado Council of Governments
Profit & Loss Budget vs. Actual
 January through November 2016

	Jan - Nov 16	Budget	% of Budget
SJB AAA	3,375.50	4,500.00	75.0%
Total Income	537,008.74	827,722.00	64.9%
Gross Profit	537,008.74	827,722.00	64.9%
Expense			
Advertising and Promotion	419.54	400.00	104.9%
All Hazards Projects			
All Hazards 2014 SHSP			
Grant 2014 Project 1	1,081.00		
Grant 2014 Project 2	5,411.61		
Grant 2014 Project 5	495.00		
Grant 2014 Project 7	663.01		
Grant 2014 Project 8	8,528.69		
Grant 2014 Project 9	1,157.00		
Total All Hazards 2014 SHSP	17,336.31		
All Hazards 2015 SHSP			
Grant 2015 Project 1	7,952.77		
Grant 2015 Project 2	40,400.00		
Grant 2015 Project 4	14,300.00		
Total All Hazards 2015 SHSP	62,652.77		
All Hazards Projects - Other	0.00	194,607.00	0.0%
Total All Hazards Projects	79,989.08	194,607.00	41.1%
AmeriCorp VISTA	8,000.00	11,700.00	68.4%
Bank Service Charge	73.00	100.00	73.0%
Broadband Expenses			
Fiber Equip Repair - RESTRICTED	0.00	15,000.00	0.0%
SCAN Dark Fiber Lease	0.00	15,420.00	0.0%
Total Broadband Expenses	0.00	30,420.00	0.0%
Consulting	170,692.73	271,000.00	63.0%
Employee/Board Appreciation	360.68		
Information Technology (IT)			
Software	1,263.06	1,755.00	72.0%
Total Information Technology (IT)	1,263.06	1,755.00	72.0%
Insurance Expense			
General Liability	2,212.75	2,102.00	105.3%
Health	20,108.00	21,516.00	93.5%
HSA	4,000.00	4,000.00	100.0%
Worker's Compensation	1,674.00	1,674.00	100.0%
Total Insurance Expense	27,994.75	29,292.00	95.6%

Southwest Colorado Council of Governments
Profit & Loss Budget vs. Actual
 January through November 2016

	Jan - Nov 16	Budget	% of Budget
Internet Connectivity			
Fast Track	9,900.00	10,800.00	91.7%
Internet Connection (AT&T)	353.46	660.00	53.6%
Total Internet Connectivity	10,253.46	11,460.00	89.5%
Match Refund	1,634.25		
Meetings	2,709.23	2,325.00	116.5%
Memberships	17,253.50	2,300.00	750.2%
Office Equipment	3,606.19	2,000.00	180.3%
Office Supplies	741.40	1,300.00	57.0%
Postage and Delivery	54.47	125.00	43.6%
Professional Development	430.40		
Professional Fees			
Accounting Software	0.00	150.00	0.0%
Audit	6,500.00	6,438.00	101.0%
Legal	4,571.66	3,000.00	152.4%
Misc.	1,329.75	250.00	531.9%
Total Professional Fees	12,401.41	9,838.00	126.1%
Rent	87.00	81.00	107.4%
Salary and Wages			
457 Retirement	3,244.56	3,487.00	93.0%
Car Allowance	3,300.00	3,600.00	91.7%
Cell Phone Allowance	2,470.00	2,340.00	105.6%
Housing Allowance	2,700.00		
Payroll Processing Fee	1,422.58	1,550.00	91.8%
Payroll Tax	10,176.10	12,956.00	78.5%
Salary and Wages - Other	123,244.84	151,541.00	81.3%
Total Salary and Wages	146,558.08	175,474.00	83.5%
Software Maintenance e-TICS	8,892.19	8,400.00	105.9%
Team Building	320.00		
Travel	15,273.77	17,000.00	89.8%
Total Expense	509,008.19	769,577.00	66.1%
Net Ordinary Income	28,000.55	58,145.00	48.2%
Other Income/Expense			
Other Income			
Interest Earned	0.41		
Total Other Income	0.41		
Net Other Income	0.41	0.00	100.0%
Net Income	28,000.96	58,145.00	48.2%

Reports

Director's Report

To: SWCCOG Board of Directors
From: Miriam Gillow-Wiles
Date: 5 January 2017

Comments: Happy Holidays! I hope everyone had a great time and stayed warm when winter decided to visit. Due to the holidays, December tends to be a rather quiet month. This allows us to move along some projects, strategize, and prepare for 2017.

DOLA 2017 Technical Assistance Grant

The SWCCOG was successful, yet again, for funding. We had requested \$65,000 from DOLA. At the October Board meeting, the Board approved \$15,000 of grant match funds, and \$10,000 in-kind. The in-kind is ear marked for staff, and will not be spent on contractor work.

DOLA reduced the grant by almost \$5000, to \$60,345. This reduction will be in the Transit Planning aspect of the grant, as broadband development is of more importance to the SWCCOG Board overall, than Transit Planning. Below is the updated budget.

Project	DOLA	Cash Match	In Kind	Total Per Project	
4 Corners Transit Planning	\$ 5,345	\$ 40,000	\$ -	\$ 45,345	Miriam Gillow-Wiles: This is from the Grant Match held in bugets
Broadband Development	\$ 55,000	\$ 15,000	\$ 10,000	\$ 80,000	Miriam Gillow-Wiles: \$10,000 for Staff (in-kind) \$70,000 for contractor
Total	\$ 60,345	\$ 55,000		\$ 125,345	

Community Contact Information

Many of you have filled out, or responded to my email about any updates or changes to the contact info for the Member representatives. I have also tried to capture the best way to communicate with each entity's representative(s). Thank you to those who have already provided me the info, for those who have not, please do so soon.

Dark Fiber Lease

Seven members have approved the Dark Fiber lease approved in August 2016. The following Communities/Counties have executed the MOU. There are still five communities/counties that need to approve the MOU (Rico is exempt, since there is no SCAN infrastructure in Rico). As a reminder, I am available to come out and talk with elected boards regarding this item.

- Approved: Archuleta, Bayfield, Cortez, La Plata, Mancos, Pagosa Springs, San Juan County

Broadband Report

To: SWCCOG Board of Directors
From: Miriam Gillow-Wiles
Date: 5 January 2016

Comments: The final Regional Broadband Plan will be presented and discussed on Friday January 20th at 1pm at the La Plata County Administration Building. Please RSVP or respond to the email invitation so we know how many to expect.

Transportation Report

To: SWCCOG Board of Directors
From: Jessica Laitsch
Date: 30 December, 2016

Comments: Transportation:

The SWTPR met on 2 December, 2016. Highlights of the meeting included:

- Election of officers for 2017
- Updated Agreement with SWCCOG for management services

The next SWTPR meeting will be held at 9:00 a.m. Thursday, 2 February, 2017 at the Carnegie Building, 1188 E 2nd Ave., Durango.

Transit:

Staff is working with the marketing consultant to assist local transit agencies in develop marketing strategies. Marketing work will be completed early in 2017.

Staff has been working to compile fixed-route transit information for input into Google Transit. The data feeds for SUCAP and Mountain Express Transit have been completed and will be uploaded after review by the agencies. Staff is working with Durango Transit to compile their data feed.

VISTA's Report

To: SWCCOG Board of Directors
From: VISTA
Date: 30 December 2016

Comments: **Recycling**

We collected the last Snapple-Dr.Pepper Recycle Bin and we will be giving it to Rico in the coming days. I have begun preliminary discussions with Jessika Buell at Marketing Concepts Squared regarding our community based recycling pamphlets. She and I are currently developing the design and the content for these printable materials. We intend to make these materials available to download and print off of our recycling website. In addition to my ongoing discussions with a local elementary school principal, I have also started working with the Colorado Alliance for Environmental Education to develop our recycling education pilot program.

Discussion Items

Decision Items

SWCCOG Executive Committee Minutes

To: SWCCOG Board of Directors

From: Sara Trujillo

Date: 5 January 2017

Comments: At the December 2 meeting an update to unclear information in the Executive Committee meeting minutes for October 31, 2016 was requested. Those minutes have been updated and are being presented here for approval.

Also attached for review and approval are the Executive Committee minutes from November 18, 2016.

Legal Review: None

Fiscal Impact: None

Staff Recommendation: Executive Committee approve the attached minutes from October 31, 2016 and November 18, 2016.

**Southwest Colorado Council of Governments
Executive Committee Meeting
Monday, 31 October 2016, 1:00 p.m.
Financial Meeting**

In attendance:

Andrea Phillips – Town of Mancos

Julie Westendorff – La Plata County

Miriam Gillow-Wiles – Southwest Colorado Council of Governments

Sara Trujillo - Southwest Colorado Council of Governments

Jessica Laitsch - Southwest Colorado Council of Governments

Dennis Wegienek - Southwest Colorado Council of Governments

The meeting began at 1:09 p.m.

Sara described that the reason the 2016 budget projections have taken so long is that she was waiting on final numbers for a number of grants. She described the current status on various account lines.

Andrea asked when we would know about the DOLA amendment for broadband. Sara replied that Miriam contacted Ken Charles earlier in the day to follow up. Andrea asked how much of the broadband project would be paid out this year. Sara estimated it would be about \$82,000, if the proposed amendment is approved there will be an additional \$12,000 to include all the consulting work for the year. Miriam elaborated that the original contract with NEO Connect was \$91,000, the Ute Mountain Ute addition was \$7,500, the DOLA funded portion was \$75,000 with a match of \$25,000 for consulting work with \$34,000 in total match received. She explained that staff time has taken twice as much match as initially anticipated resulting in a \$10,000 deficit for staff time for broadband, so the COG is asking for a change from DOLA. Julie asked how we went over budget on the broadband project. Miriam replied that at the August Board Meeting the Board discussed doing fiber to the home and NEO Connect moved forward on this portion of the project without formal board approval. Julie asked how much the budget amendment request was. Miriam replied the request will be for \$28,000, but they expect it to come in at \$18-20 thousand. She added that the request has been delayed due to concerns from DOLA. Julie asked for clarification whether we are looking for reimbursement for monies that have already been spent. Miriam replied yes. Julie asked how this happened. Miriam replied that the additional expenses have been paid out of the match. The contract amendments came up later in the year and the research into the SCAN issues took more time and expense than anticipated. Julie asked where the additional SCAN costs would go. Miriam replied that this is staff time for additional research. Andrea mentioned that the board may not have understood the additional work would result in higher cost. Miriam agreed, and that the work took place before staff caught it and the board gave direction. Sara added that as a consultant NEO Connect should not have done the work without a contract amendment. Andrea asked for clarification that the Ute Mountain Ute Tribe will pay their share. Miriam replied that they will pay their match. Andrea asked about the status with respect to DOLA. Miriam replied that she is continuing to work with Ken. Julie asked where additional monies would go if they are received. Miriam replied that the staff time was not included in the grant. Julie asked if the \$23,000 in staff time for broadband was paid from dues. Miriam replied that dues covered about \$13,000 and the remaining \$10,000 was covered through match. Miriam added that if DOLA does not increase the grant amount, then the COG will have to cover unreimbursed expenses. Julie asked why. Miriam replied there was a significant amount of time, an approach that could have helped this would have been a broadband committee to work through rather than everything through the board; however there was not support for creating a

committee. Julie asked what the problem is with respect to dues being paid for broadband versus other projects. Miriam replied that dues are allocated to pay for expenses that cannot be reimbursed through grants, since more was spent on this project means that less can go to other projects. There was discussion about the ramifications, specifically that unless the COG receives more money they will have to spend into the fund balance. Andrea asked if other lines could be reduced to cover this. Sara described the estimates for the 2016 budget and that the estimates are very tight for remaining expenses for the remainder of the year. Julie asked how more staff money is being spent. Miriam replied that more of her time has been spent on this project than expected. Andrea expressed concern that the contractor moved forward without board approval. Sara mentioned that the recent grant application for 2017 with in-kind staff time will put us in the same position next year since it will not be reimbursable. Julie asked if there is not enough money to pay the organization's obligations without going into fund balance or getting an increase from DOLA. Also she asked when expenditures would need to go into fund balance. Sara replied that if DOLA increases funds she will move monies spent for the consultant out of match to be paid by grant funds. Miriam elaborated that she is working to avoid going into fund balance, hopefully through DOLA funds. Julie asked for clarification that the COG will not be able to pay its obligations for the year. Miriam replied that they may need to use fund balance. There was discussion about use of the fund balance and thoughts to avoid this situation.

Andrea asked about the 9038 grant. Miriam replied that indications from DOLA are that the changes should be fine. She added that staff has heard the COG will likely receive funding for transit planning through CDOT.

Julie asked for clarification that unforeseen expenses have been absorbed into the budget with the exception of broadband. Miriam replied yes. Julie asked how this situation can be avoided in the future. Miriam replied that it is challenging as the scope of grants can change, she can do things such as estimate higher for staff time in the future; the challenge is that so much of the budget is grant funded. Sara mentioned that the expenditures include other items beyond just staff time. Julie replied that she wants to reduce expenses that can be avoided, such as food at meetings. Andrea suggested again raising the issue of creating a broadband committee. Miriam replied that originally the technical committee consisted of the IT staff from the communities. She added that a technical committee would have been helpful for reviewing information as Diane completed it and could be useful moving forward in 2017. Andrea suggested asking COG members to have their staff help in this capacity, even if not specifically IT staff. Julie added that the request should include specifics about expectations for the committee. Miriam added that this could be a small committee, perhaps one representative per county.

Julie asked what the financial impacts would be if 4CORE comes under the COG. Miriam replied the first year would be a fee-for-service based on the amount of time spent, and this is not currently built into the budget. Julie asked if this should be included as a placeholder. There was discussion about how much staff time should be estimated for this. They also discussed options surrounding bringing 4CORE staff under the COG.

Andrea requested that a tracking sheet of staff's time allocated to different programs be sent to the Executive Committee. There was discussion about preparing a summary by month of staff time on various projects through 2017. Additionally there was discussion about internal controls to watch account lines, particularly with respect to grant budgets, throughout the year. Miriam mentioned that she would like to do the preliminary budget early in the year to get amounts for dues to the members early, with the final budget to be completed on the regular cycle.

The meeting was adjourned at 2:28 p.m.

**Southwest Colorado Council of Governments
Executive Committee Meeting
Friday, 18 November 2016, 2:00 p.m.**

In attendance:

Andrea Phillips – Town of Mancos

Julie Westendorff – La Plata County

John Egan – Town of Pagosa Springs

Miriam Gillow-Wiles – Southwest Colorado Council of Governments

Sara Trujillo - Southwest Colorado Council of Governments

The meeting began at 2:07 p.m.

Andrea asked if reports would be read only and staff available for any questions. Miriam confirmed yes, and that making reports read only has saved time and helped keep meetings progressing. Andrea said that community updates are rarely done and asked if that item should be taken off the agenda and future agendas. Julie said that item used to be at the end of the agenda and was moved to the middle because it was rarely addressed and members felt it important for sharing of information. Miriam suggested leaving community updates on the agendas.

Miriam reported that Montezuma County sent a letter stating that they would be reducing their TPR dues by 10% for 2017. Although the 10% is a minimal amount of money, it is the principle; Miriam would not want all communities assuming they can set their dues amount. Andrea asked what recourse the COG has. Miriam said the COG performs administration duties for the TPR. The TPR has no by-laws and by state regulation, meetings are held. Julie said it may not be the COG's position to control the TPR or have say in who participates as the COG is just the administrator. Andrea asked how the dues are determined. Miriam said Region 9 had set a formula and dues amounts that have not changed in four years or more. Julie asked what the dues go towards. Sara said any expenses the TPR grant does not cover or if the grant funds are expended before the end of the fiscal year, dues are used. Julie said if a member does not pay their full dues, they do not get a vote. Andrea and Julie agreed that the discussion needed to be at the TPR level before the COG. Miriam said the issue is on the TPR agenda and in the meantime she will communicate with CDOT, Kevin Hall, TPR Chair, and Bentley Henderson, TPR Vice Chair, for advice. Miriam will add this information to her director's report under the COG agenda. In addition, Miriam said the contract for administration services between the COG and TPR has expired; therefore, a new contract is being created that will involve a three year timeframe versus one year.

Julie asked if there would be a contract to review for RHA services. Miriam said no that the decision item will be to determine if the board wants to move forward and have a contract created. Providing this service would be in the COG's financial favor. Andrea asked if the RHA has just one meeting per year and how much they will pay the COG. Miriam confirmed just one meeting per year that the COG would be responsible for coordinating and the fee for service is \$10,000 annually with one audit that the RHA will pay for in full. Andrea asked if the RHA is transferred to the COG, would they still have their own board. Julie said the RHA board would remain the same as it is now and that nothing is being transferred; it is just a contract for services and not a merger or acquisition.

Andrea asked if the 4CORE discussion is done. Julie confirmed yes that a relationship does not work right now for 4CORE or the COG. Miriam said closure on this subject will be provided in the director report.

Andrea stated that Shane Hale and Ron LeBlanc were going to talk to people about the treasurer position and asked if there were any nominees. Miriam said Chris La May is a likely candidate as many folks do not have the time. Shane Hale and Lana Hancock were considered. Jim Ostrem from Rico, the newest member, has been very engaged; however, being such a new member, Miriam is unsure he could take the position. Andrea stated that multiple county representations is important and will make some phone calls.

Andrea asked if the Executive Director merit raise discussion would need to be done in executive session. Miriam said in the past it has not as there was simply a recommendation for raise and a vote. Julie said the action needs to be done in open meeting; however, the discussion would need to be done in executive session, and being that the Executive Committee needs to report out substance, the meeting will need to go into executive session for discussion then back out for the decision on the merit raise. Andrea asked if a raise would be effective January 1, 2017. Miriam confirmed yes. Andrea asked if staff have had reviews. Miriam confirmed yes and stated that maximum raises were budgeted into the 2017 budget.

Julie asked for the status of the broadband grant. Miriam said if an increase in DoLA 8010 funds is requested, an increase in match will be required that will put the budget in a worse situation. Therefore, additional funds will not be requested from the DoLA 8010 grant. Without additional funds, the 2016 budget will most likely be 1-2% negative that will then require use of some fund balance. Julie asked what ability the COG has to go into the fund balance. Andrea said Mancos is allowed to go into their fund balance after a budget amendment when necessary to create a balanced budget. Miriam said this is the same for the COG. In addition, the COG does not fall under state statute for budget regulations because of how the bylaws are written. The state does not recognize the COG as a governmental entity. Andrea asked if there will be an update on this item. Miriam said not until final numbers are known so accurate and unchanging information can be provided. Andrea asked when a vote will be needed to dip into the fund balance. Miriam said not until the amendment is presented in February 2017. Julie asked if payment would be made to NEO Fiber in 2017 for work done in 2016. Miriam said yes and that some of NEO Fiber's work can be paid through a future broadband contractor grant, which she has talked about with Diane Kruse.

Julie asked about 2017 budget changes. Sara said the 2016 and 2017 budget amendments will be done at the same time in February 2017 as much has changed with the 2017 budget as well, especially with how early in the year the budget was done. Miriam said she plans to do the preliminary budget for 2018 early next year but not finalize the budget until December 2017 because of many changes that happen throughout the year.

The meeting was adjourned at 3:02 p.m.

DOLA 2017 Technical Assistance Grant

To: SWCCOG Board of Directors
From: Miriam Gillow-Wiles
Date: 5 January 2016

Comments: In October 2016, the Board approved an application for the 2017 Technical Assistance Grant from DOLA for \$65,000 for Broadband Planning Phase 2 (contract negotiation, federal grant writing support, etc) and 4 Corners transit planning. This was matched with \$40,000 from CDOT, \$15,000 Cash from Member Jurisdictions, and \$10,000 in kind from SWCCOG.

This grant was awarded at about 92% of the request, or \$60,345. The reduction of \$4,655 will be cut from the Transit Planning aspect of the grant. Staff understands that Broadband takes precedent over Transit Planning. All match (CDOT, Members, in-kind) will remain the same. Reduction of match may reduce grant funding.

At this time, we do not have a contract from DOLA. Recommendation from DOLA was for the Board to approve staff to sign the contract. The technical assistance grants are typically only one year in duration, so waiting for the February 2017 meeting would delay the movement of both projects.

Legal Review: No contract to review at this time

Fiscal Impact: High. To continue with Regional Broadband Planning and Regional Transit this grant is important.

Staff Recommendation: Authorize staff to sign DOLA contract.

eTics Contract Memo

To: SWCCOG Board of Directors
From: Miriam Gillow-Wiles
Date: 5 January 2016

Comments: The attached contract with MidState Consultants for eTics software will provide broadband asset management software for the SWCCOG member jurisdictions. This contract changes the way in which the software is managed, instead of licenses in Cortez and Durango, it will be web based and accessible to all members. If approved, the cost will be covered by DOLA Technical Assistance grant 9038.

Some of you may recall that the SWCCOG and MidState had a contract for the software eTics that began in 2011. This contract expired after three years. As a result of this, I have been working on renegotiating this contract, as the software has not been utilized exceptionally well due to limited staffing and AutoCAD (drafting software) licensing among other reasons. Since the inception of the initial contract, Cortez, Durango, and La Plata have split the cost of this software (Cortez – 50%, Durango and La Plata – 25%). The smaller jurisdictions did not have access to this software due to cost, software, and staffing.

After many conversations with the three entities currently paying, but not fully utilizing the eTics software, we decided an update to the previous contract and software use was in order. The changes include no longer keeping licensed copies of eTics in Cortez and Durango, uploading all of the member jurisdiction's assets, purchasing online map viewing ability, switching updates from member's employees to MidState.

This contract updates the previous contract with the following:

- WebMap (online map viewing) licenses
 - o 2017 – 2
 - o 2018 – 3
 - Software for redlining existing broadband maps for staff to update broadband assets for all communities
 - Training for redlining software (30 – 45 mins)
 - 40 hours year for phone support (10 hours per quarter, or about 3.33 hours per month)
 - 48 hours per year (average of 4 hours per month) for map updates, done at MidState
 - Publication of maps monthly based on any changes (no changes to broadband infrastructure = no need to republish maps).
-

eTics Contract Memo

Overall, this will allow for better mapping and asset management of the Member's broadband assets. Further, it will be covered by the DOLA Technical Assistance Grant 9038, Shared Services. Generally, this reduces the overhead costs of the members who were paying for the software while maintaining the same benefits, as well as allows more communities to utilize broadband asset mapping and management software.

Legal Review: Reviewed

Fiscal Impact: Total contract amount for 2 years of services: \$14,928 plus a one-time cost of \$500-\$700 for GIS updates. Paid for by DOLA Shared Services Grant.

Staff Recommendation: Approve attached contract with signature authority to Executive Director (if any changes by MidState from time of publishing packet).

e-TICS SOFTWARE SERVICE AGREEMENT

Specific to the United States of America

("Agreement")

PURPOSE OF AGREEMENT

The purpose of this agreement is to provide e-TICS Software Hosting Services to the Southwest Colorado Council of Government (SWCCOG) for the benefit of its members. Rights and services provided to SWCCOG herein may be used by its members upon consent of the SWCCOG Executive Director. Under this Service Agreement, Mid-State Consultants, Inc. ("MSC") will provide electronic data representing SWCCOG Member broadband resources and the associated attribute information as defined in the e- TICS Software Environment and Services Pricing Exhibit. SWCCOG will access MSC's computer hardware, e-TICS software, operating system and database in a Software as a Service (SaaS) model. The parties of this Agreement are:

Mid-State Consultants, Inc.

1475 North 200 West Nephi, UT 84648

Phone:(435) 623-8601

Fax: (435) 623-8610

www.mscon.com

("MSC") and/or Mid-State Consultants, Inc. c/o
Tory Richtmyer Director, MSC Sales & Marketing
Additional contact information for Tory Richtmyer:

(435) 623-8601 (Main Office)

(435) 623-6676 (Direct)

trichtmyer@mscon.com (Email)

Southwest Colorado Council of Governments

Miriam Gillow-Wiles, Executive Director

PO Box 963 Durango, CO 81302

Phone: 970-779-4592

www.swccog.org

("SWCCOG")

THIS AGREEMENT is made between MSC and SWCCOG as of the Effective Date. SWCCOG will execute the agreement and be the responsible party for payment to to MSC as set forth in this agreement.

The parties agree as follows:

1 DEFINITIONS

- 1.1 **Confidential Information** means the non-public information of a party to this Agreement. Confidential Information of MSC includes without limitation the e-TICS Software including the algorithms, methods, techniques and processes embedded in this application. Confidential Information includes without limitation non-public, SWCCOG-maintained account records of its member and their customers. Confidential Information does not include information that: (a) is or becomes known to the public without fault or breach of the non-disclosing party; (b) the Discloser regularly discloses to third parties without restriction on disclosure; or (c) that a party obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation.
- 1.2 **Discloser** means the party providing its Confidential Information to the other party.
- 1.3 **Documentation** means information or instructions published by MSC or by third parties and delivered to SWCCOG for access to the e-TICS environment.
- 1.4 **Effective Date** means the date identified on the signature page of this Agreement.
- 1.5 **Intellectual Property Rights** means all patents, patent rights, patent applications, copyrights, copyright registrations, trade secrets, trademarks and service marks and Confidential Information.
- 1.6 **Module** means a part or functional fraction of the e-TICS Software.

1.7 **Related Computer Program** means the computer program whose property is held by third parties, and necessary to the correct operation of the e-TICS Software.

1.8 **Services** means installation, training and engineering services identified in the Services matrix in *Exhibit 1* that SWCCOG receives from MSC.

2 e-TICS SOFTWARE AS A SERVICES (SaaS)

2.1 **e-TICS Software.** The functionalities to be offered to SWCCOG through the SaaS Platform are described in *Exhibit 1*.

2.2 **Remote Access.** Subject to the terms and conditions of this Agreement, including the maximum number of simultaneous access as specified in *Exhibit 1*, MSC grants SWCCOG to access the e-TICS Software on premises (or contracted third party web SaaS supplier) during the term of this Agreement.

2.3 **The Access Model.** Some/all Modules of the e-TICS Software are accessed remotely by SWCCOG from a server maintained by MSC (or contracted third party web server SaaS supplier). MSC or the sub-contractor will provide server management and database maintenance functions.

2.4 **Restrictions on Use of the e-TICS Software.** SWCCOG recognizes that no legal rights related to the e-TICS Software environment or any part of the software is being transferred to SWCCOG through this Agreement, other than a license to use it as set forth herein. SWCCOG is prohibited from using the e-TICS Software to provide service bureau or data processing services to third parties. SWCCOG will not allow the remote access to be used by, or disclose all or any part of e-TICS environment to any person except

employees or onsite contractors. SWCCOG may not copy, move or load the e-TICS Software on computers located at any site other than those sites approved by MSC.

2.5 **Guarantee.** MSC does not guarantee that the e-TICS Software will meet the needs of SWCCOG, or that its operation will be free from interruptions or errors.

2.6 **Intellectual Property Rights Notices.** SWCCOG is prohibited from removing or altering any of the Intellectual Property Rights notice(s) embedded in or that MSC otherwise provides under this service agreement

3 SERVICE AND SUPPORT

3.1 **Services and Support.** MSC agrees to provide and SWCCOG agrees to receive the following Services:

3.2 **Installation and Training Services.** MSC will provide SWCCOG with the installation and training services identified in *Exhibit 1* for the fees indicated.

3.3 **Consulting, Modification and Conversion Services.** MSC will also provide SWCCOG with the consulting, modification and/or conversion services identified in *Exhibit 1* for the fees indicated.

3.4 **Telephone Support.** MSC will also provide SWCCOG reasonable telephone support in the use of e-TICS Software during normal MSC office hours. If SWCCOG seeks telephone support from MSC of more than ten (10) hours in any calendar quarter, MSC reserves the right to invoice SWCCOG for such excess telephone support at MSC's hourly support rate of \$49.25 per hour. The aforementioned ten (10) hours of included quarterly telephone support begins after MSC has installed the e-TICS software and training has been completed, and is separate from and in addition to those services provided in *Exhibit 1*.

3.5 **Integration to the Legacy.** If MSC integrates with any SWCCOG legacy systems the integration

module(s) will be removed at the end of this Agreement.

3.6 **Workmanlike Skills.** MSC will render all Services in a professional and workmanlike manner. MSC will replace any MSC personnel that are rendering Services on-site at a SWCCOG facility if SWCCOG reasonably considers the personnel to be unacceptable and provides MSC with notice to that effect, provided that such replacement does not violate any law or governmental regulation applicable to such personnel replacement.

3.7 **Conditions on Providing Services.** In each instance in which MSC is providing SWCCOG with Services, MSC and SWCCOG will develop a project plan that identifies each party's responsibilities for such Services. The project plan will describe the tentative schedule and the scope of Services that MSC will provide. SWCCOG must assign a project manager who will assume responsibility within SWCCOG for management of the project. While MSC is providing the Services, SWCCOG must provide MSC with such facilities, equipment and support as are reasonably necessary for MSC to perform its obligations, including remote access to the equipment. SWCCOG must ensure that the equipment is operational, accessible and supported at the times agreed to by the parties in the project plan. If the parties do not develop a project plan in any instance, MSC will nonetheless provide SWCCOG with the Services on an as-directed basis.

4 DELIVERY

4.1 **Delivery.** MSC will configure the SaaS facility and the communication infrastructure to deliver the services to SWCCOG.

5 PAYMENT AND TAXES

5.1 **Payment.** SWCCOG will pay MSC according to *Exhibit 1*. SWCCOG will also reimburse MSC for actual reasonable travel and per diem expenses, to be charged at no more than the applicable federal GSA rate, where travel is requested by

SWCCOG, and where MSC services cannot be performed remotely. MSC will use reasonable efforts to limit travel and per diem expenses by using coach airfare, booked in advance when available, staying at hotels identified in advance by

SWCCOG as offering SWCCOG's contractors a discounted rate, and sharing rental cars. MSC shall provide prompt monthly invoices to SWCCOG and SWCCOG will pay each MSC invoice by no later than thirty (30) days after receipt. Late payments are subject to an interest charge of 1.5% per month.

- 5.2 **Taxes.** SWCCOG is a tax exempt entity. MSC is an independent contractor of SWCCOG and shall be responsible for payment of its own tax obligations.

6 CONFIDENTIAL INFORMATION

- 6.1 **Confidential Information.** Except as otherwise permitted under this Agreement, neither party will not knowingly disclose to any third party, or make any use of the other party's confidential information. All parties will use at least the same standard of care to maintain the confidentiality of a discloser's confidential information that it uses to maintain the confidentiality of its own Confidential Information of equal importance. The non-disclosure and non-use obligations of this Agreement will remain in full force with respect to each item of Confidential Information for a period of ten (10) years after a party's receipt of that item. However, SWCCOG's obligations to maintain both the e-TICS Software and any other software provided with the e-TICS Software as confidential will survive in perpetuity. Notwithstanding anything contained herein to the contrary, MSC recognizes that SWCCOG is a division of local government as are its members and are therefore subject to the Colorado Open Records Act ("CORA"). If any SWCCOG member receives a request under CORA for any information that MSC has clearly identified as confidential or proprietary, the member will promptly advise MSC of the request in order to allow MSC to take whatever legal action it may deem appropriate, at its sole

expense, in order to protect the information from public disclosure. No member of the SWCCOG shall be in default of this provision for actions taken in compliance with CORA.

7 TERM AND TERMINATION

- 7.1 **Term.** This Agreement shall commence on the Effective Date and shall continue for two (2) years, subject to annual appropriation, and unless terminated earlier as provided in this Agreement. This Agreement may be extended by mutual written agreement of the parties.

- 7.2 **Right of Termination.** A party has the right to terminate this Agreement if the other party breaches a material provision of this Agreement. Either party has the right to terminate this Agreement at any time while an event or condition giving rise to the right of termination exists. To terminate this Agreement, the party seeking termination must give the other party notice that describes the event or condition of termination in reasonable detail. From the date of its receipt of that notice, the other party will have thirty (30) days to cure the breach to the reasonable satisfaction of the party desiring termination. If the event or condition giving rise to the right of termination is not cured within that period, this Agreement will automatically be deemed terminated at the end of that period. However, notice to MSC of a suspected Documented Defect will not constitute a notice of termination of this Agreement. Additionally, SWCCOG shall have right to terminate for any reason and at its sole discretion upon providing 30 days

- 7.3 **Exclusive Right of Termination.** MSC shall be entitled to cancel this Agreement immediately, without any liability to SWCCOG, should SWCCOG:

- 7.3.1 Fail to comply with the laws and regulations issued by government entities regarding any issue related to this Agreement.
- 7.3.2 Become subject to any form of financial insolvency for more than 180 days that can

represent a risk to the fulfillment of this Agreement.

7.3.3 Use the e-TICS environment in violation of the terms of this Agreement.

7.3.4 Use of the Services outside the terms of this Agreement.

7.3.5 Additionally SWCCOG shall be entitled to cancel this Agreement immediately, without any liability to MSC should MSC:

- a. Fail to comply with the laws and regulations issued by government entities regarding any issue related to this Agreement.
- b. Become subject to any form of financial insolvency for more than 180 days that can represent a risk to the fulfillment of this Agreement.

7.4 **Effect of Termination.** Upon termination of this Agreement by either party, SWCCOG will promptly return to MSC or (at MSC's request) will destroy the interface model delivered, and will certify to MSC in writing, over the signature of a duly authorized representative of SWCCOG, that it has done so. If SWCCOG has made advance payment for services, MSC will refund such advance payments to SWCCOG pro-rated to the date of termination.

7.5 **Survival of Obligations.** All obligations relating to non-use and non-disclosure of Confidential Information and indemnity will survive termination of this Agreement.

7.6 **Termination without Prejudice to Other Rights and Remedies.** Termination of this Agreement will be without prejudice to the terminating party's other rights and remedies pursuant to this Agreement.

8 NOTICES

8.1 **Notices.** All notices and other communications required or permitted under this Agreement must be in writing and will be deemed given when: Delivered personally; sent by United States registered or certified mail, return receipt requested; transmitted by facsimile, transmitted by e-mail, or sent by overnight courier. Notices must be sent to a party at its address shown on the first page of this Agreement, or to such other place as the party may subsequently designate for its receipt of notices.

9 FORCE MAJEURE

9.1 **Force Majeure.** Neither party will be liable to the other for any failure or delay in performance under this Agreement due to circumstances beyond its reasonable control, including Acts of God, acts of war, accident, labor disruption; acts, omissions and defaults of third parties and official, governmental and judicial action not the fault of the party failing or delaying in performance.

10 ASSIGNMENT

10.1 **Assignment.** Neither party may assign any of its rights or obligations under this Agreement, and any attempt at such assignment will be void without the prior written consent of the other party. For purposes of this Agreement, "assignment" shall include use of the access of e-TICS Software for benefit of any third party to a merger, acquisition and/or other consolidation by, with or of SWCCOG, including any new or surviving entity that results from such merger, acquisition and/or other consolidation. However, the following shall not be considered "assignments" for purposes of this Agreement: MSC's assignment of this Agreement or of any MSC rights under this Agreement to MSC's successor by merger or consolidation or to any person or entity that acquires all or substantially all of its capital stock or assets; and MSC's assignment of this Agreement to any person or entity to which MSC transfers any of its rights in

the e-TICS Software.

11 NO WAIVER

11.1 **No Waiver.** A party's failure to enforce its rights with respect to any single or continuing breach of this Agreement will not act as a waiver of the right of that party to later enforce any such rights or to enforce any other or any subsequent breach.

12 CHOICE OF LAW; SEVERABILITY

12.1 **Choice of Law; Severability.** This Agreement will be governed by and construed under the laws of the State of Colorado. Venue for any proceeding brought pursuant to this Agreement shall be in La Plata County, Colorado. If any provision of this Agreement is illegal or unenforceable, it will be deemed stricken from the Agreement and the remaining provisions of the Agreement will remain in full force and effect.

13 LIMITATIONS OF LIABILITY

13.1 **LIMITED LIABILITY OF MSC.** MSC'S LIABILITY IN CONNECTION WITH THE ACCESS TO e-TICS PLATFORM, ANY SERVICES, OR ANY OTHER MATTER RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEE THAT SWCCOG ACTUALLY PAID TO MSC IN A GIVEN YEAR (12 MONTHS) FOR THE ACCESS TO e-TICS SOFTWARE PLATFORM OR THE SERVICES GIVING RISE TO THE LIABILITY, OR THE ACTUAL DAMAGES PROVEN, WHICHEVER IS GREATER.

13.2 **EXCLUSION OF DAMAGES.** REGARDLESS WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL MSC BE LIABLE TO SWCCOG FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT MSC HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH DAMAGE.

13.3 **BASIS OF THE BARGAIN.** SWCCOG ACKNOWLEDGE THAT MSC HAS SET ITS FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

14 ENTIRE AGREEMENT

14.1 **Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to its subject matter, and supersedes and extinguishes all prior oral and written communications between the parties about its subject matter. Any purchase order or similar document which may be issued by SWCCOG in connection with this Agreement does not modify this Agreement. No modification of this Agreement will be effective unless it is in writing, is signed by each party, and expressly provides that it amends this Agreement.

14.2 Parties in this agreement. The ongoing agreement is between the SWCCOG and MSC. The SWCCOG is a governmental entity made up of certain Colorado municipalities and counties.

AGREEMENT AUTHORIZATION

THE PARTIES have executed this Agreement for the use of the e-TICS SaaS through the signature of the Officiating SWCCOG Representative.

Effective Date:

MID-STATE CONSULTANTS,
INC.

SWCCOG

By:

By:

(Printed Name and Title of Signatory)

(Printed Name and Title of Signatory)

Exhibit 1: e-TICS Software Environment and Services Pricing

e-TICS Software as a Service (SaaS) Model

The e-TICS SaaS model provides access to the SWCCOG data through the internet. The application software and hardware are maintained and supported by MSC (Mid-State Consultants Software & Services). SWCCOG will access maps and records via a web browser and by using Autodesk Design Review (as long as Autodesk supports the application) which provides local map printing. The e-TICS OSP client will be installed at MSC to facilitate record updates. Ongoing technical support to SWCCOG will be provided by MSC personnel. The primary advantage of the SaaS model is that MSC will be responsible to manage the software components and IT overhead. The SaaS fee includes e-TICS software, Oracle DB administration, backups, server administration, hardware, and technical support.

MSC will provide map drafting services at the request of SWCCOG (see pricing in *Exhibit 1*). As new broadband is built, the as-built records will be provided to MSC for posting to e-TICS at a rate of \$49.25 per hour. Fundamental to conversion is an assessment of possible landbase options, to determine if data exists to provide a more accurate landbase for SWCCOG's service territory.

e-TICS Software as a Service (SaaS) Pricing Details

e-TICS Software (2017)	License - Simultaneous Users	Cost/Schedule
e-TICS OSP:	License Bundle Includes:	\$400.00/mo.
OSP Design	1 Full Edit (located at MSC)	
Webmap	2 View Only	
TOTAL SOFTWARE APPLICATION COST (2017) >		\$400.00/mo.
e-TICS Software (2018)	License - Simultaneous Users	Cost/Schedule
e-TICS OSP:	License Bundle Includes:	\$450.00/mo.
OSP Design	1 Full Edit (located at MSC)	
Web Map	3 View Only	
TOTAL SOFTWARE APPLICATION COST (2018) >		\$450.00/mo.
System Administration Services		Monthly Fee
Technical support		Included in monthly SaaS fee
Oracle DB administration		
Application server		
DB server		
Hardware maintenance		
TOTAL SYSTEM ADMINISTRATION COST FOR 2017 AND 2018>		\$0.00
Application Maintenance	Description	Monthly Fee
Oracle DB	Oracle maintenance fee	Included in monthly SaaS fee
e-TICS OSP	Annual maintenance fee	
AutoCAD MAP	Annual subscription (MSC drafting services)	
AutoCAD Mapguide	Annual subscription	
TOTAL ANNUAL MAINTENANCE COST FOR 2017 AND 2018>		\$0.00
Map Drafting Services		Conversion Rate
Map & attribute data creation/editing/posting		\$49.25/hr.
Landbase (including all SWCCOG Member Counties/TIGER source data)-This Is a on- time fee, it is only chargeable in 2017		~ \$500.00 - \$700.00
Training (Note: Can possibly train via web and avoid on-site training costs)		Estimated Fee
e-TICS OSP WebMap Training		Travel and per diem if cannot be done remotely with advance approval of SWCCOG.
e-TICS Design Review Training		same

Note: Costs are locked in through the term of this contract

OPTINAL PAYMENT PLAN:

SWCCOG can opt to pre-pay MSC as follows:

- 1) e-TICS SaaS costs can be prepaid in one installment of \$10,200.00 at the option of SWCCOG(payment for the calendar years of 2017 & 2018).
- 2) Map drafting/posting fees can be prepaid in one installment \$4,728.00 (payment for the calendar years of 2017 & 2018, at 4 hours per month or 96 total hours).
- 3) Any prepayments amount will be reconciled at the termination of the contract to determine whether based upon the NSC monthly billings, additional funds are owed to MSC by SWCCOG, or whether SWCCOG is due a refund by MSC, and the amounts owed will be paid from the owing party, to the owed party, within 30 days of the reconciliation. .