



SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS

Regular Meeting Agenda

Friday, 8 July 2016, 1:30pm – 4:00pm

1188 E 2nd Ave, Durango, 81301

- I. Introductions
- II. 2017 Preliminary Budget Public Hearing
- III. Consent Agenda
 - a. 3 June 2016 SWCCOG Meeting Minutes
 - b. 25 May 2016 Executive Committee Meeting
 - c. May 2016 Financials
- IV. Reports (Discussion will be held for time)
 - a. Director's Report
 - b. Broadband Report
 - c. Transportation Report
 - a. VISTA Report (Includes Shared Services and Recycling)
 - b. Community Updates
- V. Discussion Items
- VI. Decision Items
 - a. 2017 Preliminary Budget
 - b. SCAN Decision
- VII. Other Items

Video/Phone Conference Info:

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

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

PO Box 963, Durango, CO 81301

970.779.4592

www.swccog.org

2016-07-06

2017 Preliminary Budget Public Hearing

2017 Preliminary Budget

REVENUES

All Hazards

All Hazards:2015 SHSP	\$	75,000.00
All Hazards:2016 SHSP	\$	134,283.00
All Hazards:2017 SHSP	\$	100,000.00

Broadband Infrastructure Grant \$ 1,100,000.00

DoLA Grants

DoLA Grants:DoLA 8011	\$	100,000.00
DoLA Grants:DoLA 9038	\$	25,000.00
DoLA Grants:DoLA Technical Assistance	\$	50,000.00

Dues Revenue

Dues Revenue:Admin Position	\$	12,200.00
Dues Revenue:COG Dues	\$	114,000.00
Dues Revenue:Match Contribution	\$	10,000.00
Dues Revenue:SWTPR Dues	\$	7,679.00

RREO Grant \$ 34,918.00

EPA Environmental Education \$ 50,000.00

SCAN Services

SCAN Services:Dark Fiber Leasing	\$	55,256.00
SCAN Services:e-TICS	\$	8,400.00
SCAN Services:Fiber Equipment Repair Fund	\$	9,754.00
SCAN Services:Telecom Service	\$	10,000.00

SWTPR CDOT Grant \$ 22,100.00

Transit Coord. CDOT Grant \$ 24,239.00

TOTAL REVENUES **\$ 1,942,829.00**

EXPENDITURES

Advertising and Promotion \$ 600.00

All Hazards Projects

All Hazards Projects:All Hazards 2015 SHSP	\$	75,000.00
All Hazards Projects:All Hazards 2016 SHSP	\$	127,569.00
All Hazards Projects:All Hazards 2017 SHSP	\$	92,320.00

AmeriCorp VISTA \$ 7,962.00

Bank Service Charge \$ 225.00

Consulting \$ 1,269,000.00

Employee/Board Appreciation \$ 200.00

Insurance Expense

Insurance Expense:General Liability	\$	2,274.00
Insurance Expense:Health	\$	35,649.00
Insurance Expense:HSA	\$	6,000.00
Insurance Expense:Worker's Compensation	\$	1,808.00

Internet Connectivity

Internet Connectivity:Fast Track \$ 10,000.00

Internet Connectivity:Software \$ 2,300.00

Match Refund		
Meetings	\$	7,000.00
Memberships	\$	6,500.00
Office Equipment	\$	4,050.00
Office Supplies	\$	1,500.00
Postage and Delivery	\$	100.00
Professional Development	\$	4,000.00
Professional Fees		
Professional Fees:Audit	\$	15,000.00
Professional Fees:Legal	\$	3,000.00
Professional Fees:Misc	\$	1,000.00
Professional Fees:Accounting Software	\$	14,000.00
Rent	\$	81.00
Salary and Wages	\$	163,219.00
Salary and Wages:457 Retirement	\$	8,161.00
Salary and Wages:Car Allowance	\$	3,600.00
Salary and Wages:Cell Phone Allowance	\$	3,120.00
Salary and Wages:Housing Allowance	\$	3,250.00
Salary and Wages:Payroll Processing Fee	\$	1,600.00
Salary and Wages:Payroll Tax	\$	13,955.00
SCAN Services Expense		
SCAN Services Expense:Dark Fiber Lease	\$	13,814.00
SCAN Services Expense:Fiber Equipment Repair	\$	9,754.00
Software Maintenance e-TICS (MidState Consultants)	\$	8,400.00
Travel	\$	16,620.00
TOTAL EXPENDITURES	\$	1,932,631.00
ENDING BALANCE	\$	10,198.00

Consent Agenda

**Southwest Colorado Council of Governments
June Board Meeting
Friday, 3 June 2016, 1:30pm
1188 E. 2nd Ave., Carnegie Building, Durango, CO 81301**

In Attendance:

Dick White – City of Durango
Ron LeBlanc – City of Durango
Chris La May – Town of Bayfield
John Egan – Town of Pagosa Springs
Chris Tookey – Town of Silverton
William Tookey – San Juan County
Julie Westendorff – La Plata County
Joe Kerby – La Plata County
Michael Whiting – Archuleta County (by phone)
Shane Hale – Town of Cortez (by phone)

Staff in Attendance:

Miriam Gillow-Wiles – Southwest Colorado Council of Governments
Jessica Laitsch – Southwest Colorado Council of Governments
Shannon Cramer – Southwest Colorado Council of Governments

Guests in Attendance:

Laurie Dickson – Four Corners Office of Resource Efficiency
Kurt Schneider - Four Corners Office of Resource Efficiency
Eric Pierson – City of Durango
Darlene Marcus – Congressman Tipton’s Office
Kelli Jones - HintonBurdick and Associates (by phone)
Diane Kruse – NEO Connect (by phone)
Ken Charles – Colorado Department of Local Affairs (by phone)

I. Introductions

The meeting was called to order at 1:37 p.m.

II. 2015 Audit Presentation

Kelli Jones, HintonBurdick and Associates, commended staff on their good work. She reported that they issued an unmodified opinion on the financial statements, there were no material weaknesses or significant deficiencies. She presented an overview of the financial information from 2015.

Dick White asked what the accounts receivable was at the end of 2014. Kelli and Miriam replied it was much less than at the end of 2015. Chris La May asked about the change in net position. Kelli replied that cash has gone down, but will go back up once outstanding receivables are received. Chris asked if a portion of the fund balance should be designated assigned versus discretionary for the fiber fund. Miriam replied that those monies were assigned in 2016 and these numbers are for 2015. Julie clarified that the discussion to assign these funds had been during budget discussions, which occurred in 2015. Julie asked how funds with specific designations would appear. Kelli replied designations of fund balance would be shown in the financial statements broken out by restricted, assigned or committed. She added that there is nothing shown as restricted right now. Miriam asked for clarification that next year there would

be a restricted line. Kelli replied that if there are restrictions, they would be shown on the financial statements.

Joe Kerby asked about the actual revenues being \$40,000 less than budgeted. Miriam replied that this is due to grant funding, for example there was one grant that was extended into 2016.

Julie asked staff to address the fund balance. Miriam replied that this is due to the Fastrack contact, lack of revenue from dark fiber leasing, and staff time on telecom. Julie summarized that this is the disparity between income and expenses related to the SCAN network.

III. 2017 Goal Setting

Julie explained that goal setting was not addressed during the board retreat. She asked about “the lens” worksheet. Miriam explained that the questions listed were identified during the board retreat as questions to ask when considering decisions.

Miriam described that the current goals are shared services, recycling, transportation, and broadband. She explained that the DOLA grants for recycling, shared services, transit, and broadband planning will be completed by the end of the year and there is doubt concerning whether DOLA will have a grant cycle next year because of the severance tax issues. She asked if there should be any modifications to the goals for 2017. Dick stated that these are the projects the COG has been working on and should continue. Julie expressed agreement in keeping a narrow set of goals to focus on. She added that 4CORE is present and while they do not specifically fall under one of these areas, a larger goal is to have organizations integrated. Miriam mentioned that integration of 4CORE could be added as a goal or just recognized as an ongoing, overarching project. Joe asked if this had previously been identified as a goal. Miriam replied that this was discussed last year, at that time it was determined to have more focus on AAA, however this has since changed. Dick suggested this may be appropriate to add as a fifth goal. He mentioned that this would be a two year process, with the first year running parallel operations. Julie asked if they would like to add partnership with 4CORE as another goal. Dick replied this could be an expansion of the recycling goal. There was general agreement to include partnership with 4CORE as a goal for 2017.

Chris asked if Rico is a member. Miriam replied that they just voted to become a member and will be added to the spreadsheet as a member organization. Julie asked about the purpose of the larger spreadsheet. Miriam replied that this is a tool for staff and “the lens” questions will help with priorities.

Dick asked about the status on the IT support grant. Miriam replied this grant is nearly completed and described some of the projects this grant assisted with. Ron LeBlanc asked what amount the grant was for. Miriam replied it was approximately \$55,000, with a \$2,000 match from each community. She added that DOLA would only pay for labor, not equipment.

Dick White motioned to accept the goals as presented in the spreadsheets and the five identified as focus goals, Michael Whiting seconded, unanimously approved.

Julie asked about the potential impacts of losing DOLA funding. Miriam replied it may limit the ability to work on specific projects such as shared services. They discussed limitations on DOLA funding and other possible funding sources.

IV. Consent Agenda

a. 6 May 2016 SWCCOG Meeting Minutes
Julie asked to change visiting “counties” to “members.”

b. April 2016 Financials

Dick White motioned to approve both consent agenda items together as presented, John Egan seconded, unanimously approved.

V. Reports (written only)

- a. Director’s Report
- b. Broadband Report
 - i. 16 May 2016 CAFII Meeting Notes
- c. Legislation Update
- d. Transportation Report
- e. VISTA’s Report (Includes Shared Services)
- f. Community Updates

Dick reported that the City of Durango will be receiving final public input on the wastewater treatment plant design prior to submitting to the State Water Quality Control. The project is estimated at \$58 million, by far the largest project undertaken by the city. Miriam had presented a report on the SWCCOG to City Council. He pointed out that traffic was heavy today.

John reported that the Town of Pagosa Springs has a number of projects, including the south Eighth Street repaving project. They have been dealing with some issues on the McCabe Creek project, it is generally on schedule although there have been some delays. Mountain Express Transit is installing new signs.

Chris reported that the Town of Bayfield is nearing completion on the water treatment plant. They are moving forward with the replacement of the bridges, planning to start construction in the fall considering schedule challenges due to wildlife. They are working with DOLA to install improvements to the water system.

Julie reported that La Plata County had a hearing and approved a coal mine permit that had been ongoing. She and Michael attended a meeting in Arboles regarding crime and that cell phone service exacerbates issues with reporting. The Colorado Airport Operators Association was in Durango and they were able to discuss airport governance options.

Willy Tookey reported that all the major passes into San Juan County are open. The BLM changed the district boundaries to put San Juan County into the Gunnison district, part of the justification is to have the entire alpine loop in one district, but this does not make logical sense considering the topography of the region.

Chris Tookey reported that the Town of Silverton had a board retreat and the goal setting will be done in two weeks. The library is 110 years old and there will be an open house to celebrate. They are working on affordable housing and will have a meeting to discuss vacation rentals. The Events Coordinator is working on a “Superfund Day” event. The train has begun running for the season. Joe asked about the newly remodeled hotel. Chris replied that they had a ribbon cutting and tours, and there are options for package deals with the train, hotel and museum. John mentioned that the hotel looks good. Dick mentioned that the superfund team has scheduled monthly meetings.

Joe added that they are working on completing the impact fee feasibility study, this will be considered by the board in a couple weeks.

Michael reported that Archuleta County has finished data collection for the courthouse and will begin making decisions. He added that the Arboles meeting went well. They are looking at a contentious gravel pit permit. The town and county developed joint strategic objectives around childcare, affordable housing, broadband, and downtown vitality. Tourist season has begun.

VI. Discussion Items

a. RFI for Broadband Public Private Partnerships Feedback for NeoConnect

Diane Kruse reported that they put together a Request for Information for a public private partnership. The intent is to determine how the private sector could extend last mile service if strategic, key routes were put in place. This does not commit the SWCCOG to anything, it is just collecting information for options. Julie asked who the RFI would be sent to. Diane replied they have put together a list of internet service providers that provide services locally and nationally, and a number of companies have reached out. Additionally, they would like to put it on the Rocky Mountain Bids system. Joe mentioned that the county will check to see if they can help with this. Miriam explained there has been discussion about whether this would need to benefit the entire region as there are no ISPs that work throughout the entire region and this may be an issue. Ron asked if an ISP is only interested in one area, how would the SWCCOG move forward. Miriam replied that, since this is a RFI, if a company only wants to work in one area they can reject the bid as the intent for this is to be a regional project. Diane elaborated that there could be different solutions throughout the region; they have written the RFI to try to ensure a regional approach. Julie agreed that the intent is a regional approach and to reach areas that may not otherwise be likely to be served. Dick suggested that preference be given to those that can approach the greatest portion of the region and maintain a focus on communities that otherwise would not be served. Diane replied that they could put this in the evaluation criteria, one concern is that CenturyLink may be the only company able to address the entire region, and there have been issues in their public/private partnership approaches. Julie asked for clarification that they do not want to discourage multiple providers in order to cover the entire region. Diane replied that is correct. Dick suggested they add language to encourage multiple providers to work collectively.

Julie asked about next steps. Diane replied that they need to finalize the RFI, including language to encourage a regional approach and encourage partnerships, and to finalize dates. She asked for feedback before they release it. Miriam asked for confirmation that they will look at a draft of the plan in July with the final plan by August. Julie asked if they are looking for comments on the 18 page document. Diane replied yes. There was general discussion on reviewing the RFI, Julie will review it and suggested they ask Ernie to do so as well.

VII. Decision Items

a. 4CORE Whitepaper & Recommendation

Laurie Dickson distributed information related to the combined structure of a COG and a non-profit based on research she had undertaken. She described that the 501C3 would need a separate governing board to maintain its 501C3 status. Miriam clarified that the intent is for 4CORE to remain a 501C3, and that non-profits do exist under COGs with the COG board as the governing board. Michael mentioned that despite 501C3 status, a non-profit could come under the COG with leadership and fiduciary responsibility being transferred to the COG board. Laurie described the model used by the East Central Colorado COG. Miriam mentioned that the COG does not have the staff capacity to take on another governing board and that having too

many governing boards can be challenging. Kurt Schneider replied there is a need to ensure the board maintains oversight and responsibility and having the board in an advisory capacity would not be sufficient. Miriam clarified that she has not found precedence of a COG bringing on an established non-profit, but many non-profits exist within COGs wherein the COG is the governing board with an advisory board for the non-profit. Kurt and Laurie described the model wherein the non-profit has a separate governing board. Miriam replied that this model is less common.

Joe asked what 4CORE is proposing. Kurt replied that this is not a proposal, just information. Chris asked for clarification that 4CORE does not want to give up its authority. Kurt replied that the full board has not had this discussion, the Executive Committee has had discussions that they do not anticipate going that direction. Miriam described that in the discussion with 4CORE, the first phase would include contracted administrative and financial work and in the second phase 4CORE would be fully incorporated, as a non-profit, with 4CORE staff becoming COG staff. Laurie replied that the East Central COG's model includes contracting of its employees. She described other models that include foundation based organizations. Chris pointed out that the Regional Housing Alliance has a similar model in place.

Julie asked about the level of interest on moving forward with merging. Dick replied that both organizations are doing similar educational efforts such as with recycling and resource efficiency, both are regional, and it could be worthwhile to look for administrative efficiencies. He added that each board must decide if they would like to continue the discussion and looking at how to move forward; he believes there is value for both organizations, although there is a lot to explore including further partnerships. Laurie mentioned that 4CORE's costs would not be reduced because they would be paying the COG for services, so they would need to continue to find alternative funding. Joe stated that part of the anticipated benefit of the COG is to combine with non-profits to reduce the overall cost to member governments. He also expressed concern about the financial viability of 4CORE and the benefits to the county from both 4CORE and the COG. Dick pointed out that a lot of work would have to be done very quickly if the decision is to move forward. Julie mentioned that if the information Laurie distributed is true, moving forward does not seem worthwhile. Ultimately, the goal is to reduce overhead costs, such as with a shared audit, and contracting services does not seem to be the most efficient. John expressed concern about the usefulness of the COG to take on 4CORE considering the information distributed. Laurie replied that 4CORE would be paying the COG for professional services and there would be opportunities for collaboration.

Julie asked about next steps. Dick replied that he will not have time for follow up in June. Julie asked what he would suggest happen next. Dick suggested moving forward with a similar model the COG had undertaken with AAA, the hope being that 4CORE would save some money and the COG would earn some money while giving time to further explore options. Miriam explained that the purpose of this discussion is to determine whether to continue moving forward, and the discussion regarding the organization of the organizations falls under strategic planning. She added that the COG has money available to undertake strategic planning. Michael asked for clarification that there would be savings to both organizations. Miriam replied yes. Michael

asked what would be the most efficient structure to take advantage of the savings without undue burden on either board. Miriam replied that needs would have to be identified to determine the structure. Julie asked if 4CORE is in favor of pursuing this. Kurt explained that the conversation was prompted from a desire for collaboration and efficiency and to help with staffing challenges. His ultimate goal is that the mission of 4CORE continues into the future, whether that is done as a separate or combined organization. John mentioned that it sounds like there may be different ideas about what the discussion was intended to be today.

Dick White motioned to authorize staff to enter into strategic discussions with 4CORE to identify what it could look like and how we could do it or whether we don't quite fit together and continue separately. John Egan seconded. Unanimously approved.

Julie recommended also looking at other possible models.

e. Meeting time change

Miriam explained that this request is to change the posted times of meetings. This issue was postponed to a later meeting.

f. Snapple Grant: Recycling Bins

Shannon explained that this grant would be for 60 recycling bins, there will be no cost to the SWCCOG.

Dick White motioned to apply for the Snapple Grant for recycling bins, Chris La May seconded, unanimously approved.

d. 2017 CIRSA Renewal

Miriam explained that this is a renewal to get a quote for CIRSA. Dick asked if staff can do this without bringing it to the board every year. Miriam replied yes because it is just to get a quote.

Dick White motioned to accept 2017 CIRSA renewal and allow staff to submit renewal applications in the future, Chris La May seconded, unanimously approved.

c. Transit & Recycling Marketing Consultant Selection

Miriam explained that the SWCCOG received two bids and neither were local. Staff recommends that the bids be rejected and they work with local agencies for a plan to move forward. Dick replied this seems reasonable.

Dick White motioned to accept the staff recommendation and reject all bids, reevaluate and come up with a plan to engage at least one marketing agency, John Egan seconded, unanimously approved.

b. Dark Fiber Lease MOU

Miriam explained that this has been discussed previously and that a decision must be made. She provided an overview of the history of the SCAN network and the attached documents. Julie asked for clarification that the 75/25% split came from the initial investment of 75% grant funded and 25% from the members. Miriam replied yes, although there is additional history. Julie asked for comments about the proposed pricing. Ron pointed out that some of the larger

entities have contributed a significant amount of staff time in addition to infrastructure and it is not fair for these entities to take additional burden to subsidize other communities. Miriam asked if the connection to EAGLE-Net was SCAN or City of Durango fiber. Eric Pierson described which portions were SCAN versus city projects. Miriam stated that the leases being discussed are only related to SCAN fiber. There was discussion about the fiber up to San Juan County. Miriam clarified that the EAGLE-Net project to San Juan was not involved with the COG. Julie asked if Ron is proposing that the City's lease agreement be set up differently. Ron replied that he would like the city to receive 75% and the COG 25%. Eric clarified that the majority of the ongoing cost for fiber is utility locates, which come to about \$10,000/year, as well as general maintenance and staff time. Miriam mentioned that the conservative estimate nearly covers these costs, even with the COG receiving 75%. Chris mentioned the cost of depreciation of assets. Miriam replied that fiber does not degrade, therefore it would not need replaced or repaired unless cut. The equipment on either end does need replaced periodically to maintain or increase speeds. Joe mentioned that there could be a future need to upgrade. Diane replied that there should not be a future need to upgrade the fiber as there is plenty of capacity. Additional capacity could be increased by upgrading infrastructure at the ends. Joe asked how option one would be handled differently than option two. Miriam replied that part of the discussions had been that the COG would help the communities with items such as locates or repairs and the leases will either be a stable source of funding for the COG to do this or member organizations will need to continue contributions for the fiber replacement fund. Julie asked if La Plata County's costs are similar to the City of Durango's. Joe replied he believes so. Chris stated that they do their own locates. Willy stated that they have probably only had a couple locate requests. Shane asked if this would be an opt-in model. He expressed concern about the continued 75/25 split simply because that was the original distribution of the grant. Julie mentioned that her goal is to not pay the COG any more money and this is a higher priority for her than additional revenue from dark fiber. Shane mentioned that this would not appreciably reduce COG dues. He expressed concern about reduced revenue to member organizations. Miriam reiterated that this would only apply to SCAN infrastructure. She added that this is a very conservative estimate and it would help increase the fiber replacement fund. Willy pointed out that per the initial discussions both the COG and the member entities would get revenue. He added that reduced revenue is equivalent to increased expense. Ron suggested splitting 50/50 for one year. Dick summarized that there are dark fiber leases essentially on the table and this would be to move forward with those. He suggested future discussion on the possibility of a tiered system. He recommended accepting Ron's proposal in order to move forward, considering the fiber would not be in place if not for the COG's SCAN grant and there is a need to pay some back to the COG.

Dick White motioned to accept the MOU and split at 50/50, William Tookey seconded.

Joe expressed support for this proposal if it will be readdressed in one year. Chris asked about the consequences if an entity does not sign on. Miriam replied that this is a policy decision whether an entity can opt-out.

For the question for the MOU to be in place for one year at a rate of 50/50.

Support: Julie Westendorff, William Tookey, Chris Tookey, Dick White, John Egan, Shane Hale

Opposed: Chris La May

Miriam explained that the next question is whether to raise the rate per strand/per mile to \$110. Dick asked what the current market rate is. Diane replied that the market rate varies widely based on various factors, the recommended rate is based on cost recovery. Chris mentioned that access fee in the lease agreement based on the City of Durango's model. Shane pointed out that the increase is significant. Miriam replied that this would not apply to existing leases, and added that there could be different rates for ISPs than for governments.

Dick White motioned to approve the cost of \$110 per strand/per mile, John Egan seconded, unanimously approved.

John stated that the issue of parity between entities needs to be discussed at some point.

The meeting was adjourned at 4:47 p.m.

**Southwest Colorado Council of Governments
Executive Committee Meeting
Wednesday, 25 May 2016, 2:00pm
Telephone Conference**

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 announced that she will not be able to attend the June 3 COG board meeting and that Julie will chair the meeting.

Andrea asked how everyone thought the retreat went. Miriam replied that the retreat was beneficial with many honest questions, needs, and concerns being brought to the table. John said he felt Marsha Porter-Norton (retreat facilitator) did a great job keeping the meeting on point and helping the process of refining what it is the COG is doing and how things are being done. Andrea said breaking into the groups was valuable.

For the June 3 meeting, Andrea asked who would lead the goal setting session. Miriam replied that this session will be done much like last year where the goal's spread sheet is put on the big screen and updated in real time as the discussion progresses. She is unsure if other goals aside from the current broadband, shared services, transportation, and recycling will be feasible. With these goals being large, steps rather than achievements will most likely be discussed. Julie asked if the goal documents from last year can be sent out to help refresh member memories. Miriam said those documents were provided in the retreat packet but can be sent out again.

Miriam said with the length of the agenda and taking time into consideration, all reports have been marked as read only. Andrea agreed reports should be read only and asked when the next broadband meeting will take place. Miriam replied the next broadband meeting will take place in July where maps, RFP, and draft plan information will be provided. Andrea asked if meetings have to be scheduled for Fridays. Miriam replied that Fridays are easier for folks who have to travel. John confirmed that coming from Pagosa is easier on Fridays.

Miriam said Diane Kruse, broadband consultant, will be calling in for the dark fiber leasing item on the agenda. Andrea stated that Mancos has been approached several times now by ISPs but the Town has no agreements in place, so tying up the dark fiber lease issue will be beneficial. Miriam agreed and said that the dark fiber leasing has been an ongoing discussion for two years with no decisions made and is now inhibiting broadband development. This issue needs a decision at the June meeting. Andrea said she has concern over the share amounts as Cortez will refuse to agree to a revenue share, but perhaps Cortez will get voted down with a majority vote. Andrea asked if Diane will recommend the higher per strand per mile amount talked about at the retreat. Miriam replied, yes, Diane will suggest \$110 per strand per mile; however, this is not public information and the information will be sent in a separate email versus the board packet until final numbers are agreed upon and legal documents created. Julie

said the email can be marked confidential. Miriam suggested an executive session be held at the June meeting for this discussion with legal counsel present. Andrea asked what Diane will be advising for the share back percentage. Miriam said Diane will advise 100% revenues go to the COG, which would create a separate revenue stream aside from grant funds and member dues. A 100% revenue stream would be approximately \$86,000 annually. This will reduce overhead for the fiber equipment repair fund, reduce dues, and help pay for staffing positions. If COG members prefer a 25% to member and 75% to COG split, the revenue stream to the COG would be approximately \$68,000 annually. Miriam noted that a 75% to member and 25% to COG split will not sustain the SCAN network. Andrea asked what the original grant agreement split was. Miriam replied 75% from grant funds and 25% match from member communities. Andrea said the revenue share should be a 75% to COG and 25% to member because if members put in 25%, they should only get 25% back. Andrea asked if fiber would be leased in pairs. Miriam replies yes, the lease would be a minimum of 2 strands and no less than 1 mile.

Andrea inquired about the direction on 4CORE. Miriam said there have been many meetings with 4CORE and documents created including a financial analysis, graphs, budget information and a Q&A document that will be shared at the meeting. 4CORE's financial situation with a huge decline in the past seems to have stabilized although 4CORE does not have a lot of money. Miriam said 4CORE was under the impression that the COG would just be a shell with admin and bookkeeping being a contract and 4CORE would continue to operate as usual. Miriam has made it clear to the 4CORE Program Director that the COG is not a shell organization and if 4CORE is to come under the COG, they will operate as the COG does, under COG policy, and as one entity. Miriam said 4CORE staff seemed surprised but are not averse.

Miriam said the Western Lands and Communities (WLC) grant in 2015 ended with a remaining balance of \$6,000. A request was made to use those funds to incorporate 4CORE into the COG and help with strategic planning. The WLC folks approved this request and feel this is good for long-term planning.

Andrea asked for an update on the AAA contract. Miriam said a letter of non-renewal was sent to Christina Knoell, the AAA Director, with no response. Julie said the AAA planned to do the same, a non-renewal, and that it is good both organizations are on the same page and being upfront. Julie suggested sending a follow-up to ensure receipt of letter.

Andrea said a staff report was not given at the retreat and asked if one would be given in the June meeting. Miriam replied yes, that she could roll this item into the goal setting and have one discussion to save time. Miriam will present what grant programs fund, what members participate in grants, and give budget information as well as accomplishments with each goal. Marsha should have her notes to staff soon from the retreat and the document will be included in the board packet. In addition, an audit presentation will be included that should be quick.

Julie requested to meet with Miriam on Thursday, June 2, to touch base and set meeting progression expectations to ensure the meeting runs smoothly. Miriam and Julie will set a meeting time.

The meeting was adjourned at 2:42 p.m.

Southwest Colorado Council of Governments

Balance Sheet

As of May 31, 2016

06/07/16

Accrual Basis

	<u>May 31, 16</u>
ASSETS	
Current Assets	
Checking/Savings	
Alpine Bank	
Alpine Bank Account (UR)	110,315.96
Fiber Equip Fund - Restricted	9,754.00
Total Alpine Bank	<u>120,069.96</u>
Total Checking/Savings	120,069.96
Accounts Receivable	
Accounts Receivable	86,401.76
Total Accounts Receivable	<u>86,401.76</u>
Total Current Assets	<u>206,471.72</u>
TOTAL ASSETS	<u>206,471.72</u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Credit Cards	
Credit Cards	
Miriam	1,219.73
Total Credit Cards	<u>1,219.73</u>
Total Credit Cards	1,219.73
Total Current Liabilities	<u>1,219.73</u>
Total Liabilities	1,219.73
Equity	
Opening Balance Equity	43,035.42
Net Income	162,216.57
Total Equity	<u>205,251.99</u>
TOTAL LIABILITIES & EQUITY	<u>206,471.72</u>

Southwest Colorado Council of Governments

Profit & Loss

May 2016

	May 16
Income	
DoLA Grants	
DoLA 7645	1,670.84
DoLA 8010	22,326.19
DoLA 8011	8,572.49
Total DoLA Grants	32,569.52
SWTPR CDOT Grant	8,700.84
Transit LCC Grant	5,986.24
Total Income	47,256.60
Gross Profit	47,256.60
Expense	
All Hazards Projects	
All Hazards 2015 SHSP	15,720.33
Total All Hazards Projects	15,720.33
Consulting	22,326.19
Insurance Expense	
General Liability	108.00
Health	1,828.00
Total Insurance Expense	1,936.00
Internet Connectivity	
Fast Track	1,800.00
Internet Connectivity - Other	37.02
Total Internet Connectivity	1,837.02
Match Refund	1,634.25
Meetings	360.76
Office Supplies	8.98
Professional Fees	
Audit	1,700.00
Professional Fees - Other	48.60
Total Professional Fees	1,748.60
Salary and Wages	
457 Retirement	270.38
Car Allowance	300.00
Cell Phone Allowance	195.00
Payroll Processing Fee	99.72
Payroll Tax	872.30
Salary and Wages - Other	11,070.30
Total Salary and Wages	12,807.70

Southwest Colorado Council of Governments

Profit & Loss

May 2016

	<u>May 16</u>
Travel	2,159.13
Total Expense	<u>60,538.96</u>
Net Income	<u><u>-13,282.36</u></u>

Southwest Colorado Council of Governments
Profit & Loss Budget vs. Actual
 January 1 through June 1, 2016

	Jan 1 - Jun 1, 16	Budget	% of Budget
Income			
All Hazards			
2014 SHSP	19,417.83	0.00	100.0%
2015 SHSP	45,713.57	0.00	100.0%
All Hazards - Other	0.00	69,753.79	0.0%
Total All Hazards	65,131.40	69,753.79	93.4%
DoLA Grants			
DoLA 7645	28,493.94	0.00	100.0%
DoLA 8010			
DoLA 8010 Grant Match	16,001.00	0.00	100.0%
DoLA 8010 - Other	49,716.78	0.00	100.0%
Total DoLA 8010	65,717.78	0.00	100.0%
DoLA 8011	8,572.49	0.00	100.0%
DoLA 9038	4,150.00	0.00	100.0%
DoLA Grants - Other	0.00	115,036.40	0.0%
Total DoLA Grants	106,934.21	115,036.40	93.0%
Dues Revenue			
COG Dues	126,202.00	126,200.00	100.0%
SWTPR Dues	7,679.00	7,679.00	100.0%
Dues Revenue - Other	0.00	0.00	0.0%
Total Dues Revenue	133,881.00	133,879.00	100.0%
RREO Grant	0.00	1,206.67	0.0%
SCAN Services			
Dark Fiber Leasing	10,128.00	10,475.73	96.7%
e-TICS	8,400.00	8,400.00	100.0%
Fiber Equipment Repair Fund	9,754.00	9,928.87	98.2%
Telecom Service	4,140.00	4,278.00	96.8%
SCAN Services - Other	0.00	0.00	0.0%
Total SCAN Services	32,422.00	33,082.60	98.0%
SJB AAA	4,923.50	4,974.96	99.0%
SWTPR CDOT Grant	17,751.34	18,164.65	97.7%
Transit LCC Grant	23,317.90	23,785.03	98.0%
Total Income	384,361.35	399,883.10	96.1%
Cost of Goods Sold			
Contracted Services	0.00	0.00	0.0%
Cost of Goods Sold	0.00	0.00	0.0%
Total COGS	0.00	0.00	0.0%
Gross Profit	384,361.35	399,883.10	96.1%
Expense			
Advertising and Promotion	317.80	320.54	99.1%
	2016-07-06		

Southwest Colorado Council of Governments
Profit & Loss Budget vs. Actual
 January 1 through June 1, 2016

	Jan 1 - Jun 1, 16	Budget	% of Budget
All Hazards Projects			
All Hazards 2014 SHSP	3,396.01	0.00	100.0%
All Hazards 2015 SHSP	17,750.53	0.00	100.0%
All Hazards Projects - Other	0.00	26,928.56	0.0%
Total All Hazards Projects	21,146.54	26,928.56	78.5%
AmeriCorp VISTA	0.00	390.00	0.0%
Bank Service Charge	88.00	88.40	99.5%
Consulting	74,750.53	81,292.18	92.0%
Employee/Board Appreciation	185.61	179.42	103.5%
Housing Allowance	0.00	0.00	0.0%
Insurance Expense			
General Liability	2,212.75	2,209.06	100.2%
Health	9,140.00	9,552.53	95.7%
HSA	4,000.00	4,000.00	100.0%
Professional Liability	0.00	0.00	0.0%
Worker's Compensation	1,674.00	1,674.00	100.0%
Insurance Expense - Other	0.00	0.00	0.0%
Total Insurance Expense	17,026.75	17,435.59	97.7%
Internet Connectivity			
Data Back-up	0.00	25.00	0.0%
Fast Track	5,400.00	5,580.00	96.8%
Software	1,038.17	1,020.31	101.8%
Internet Connectivity - Other	185.44	196.01	94.6%
Total Internet Connectivity	6,623.61	6,821.32	97.1%
Match Refund	1,634.25	1,579.77	103.4%
Meetings	2,899.12	2,879.98	100.7%
Memberships	6,453.50	6,295.23	102.5%
Office Equipment	957.89	992.63	96.5%
Office Supplies	4,055.26	4,078.14	99.4%
Postage and Delivery	33.67	36.71	91.7%
Professional Development	0.00	0.00	0.0%
Professional Fees			
Audit	6,200.00	6,207.93	99.9%
Legal	606.16	685.95	88.4%
QuickBooks/Bookkeeper	0.00	5.00	0.0%
Professional Fees - Other	908.55	886.60	102.5%
Total Professional Fees	7,714.71	7,785.48	99.1%
Rent	0.00	2.70	0.0%
RREO Equipment	0.00	666.67	0.0%

Southwest Colorado Council of Governments
Profit & Loss Budget vs. Actual
 January 1 through June 1, 2016

	Jan 1 - Jun 1, 16	Budget	% of Budget
Salary and Wages			
457 Retirement	1,487.09	1,553.75	95.7%
Car Allowance	1,500.00	1,570.00	95.5%
Cell Phone Allowance	975.00	1,042.50	93.5%
Health Insurance	0.00	0.00	0.0%
Payroll Processing Fee	726.50	753.95	96.4%
Payroll Tax	4,640.88	4,918.05	94.4%
Salary and Wages - Other	58,144.15	61,257.37	94.9%
Total Salary and Wages	67,473.62	71,095.62	94.9%
SCAN Services Expense			
Dark Fiber Lease	0.00	514.00	0.0%
Fiber Equipment Repair	0.00	500.00	0.0%
SCAN Services Expense - Other	0.00	0.00	0.0%
Total SCAN Services Expense	0.00	1,014.00	0.0%
Software Maintenance	4,350.00	4,485.00	97.0%
Travel	6,433.92	6,786.12	94.8%
Total Expense	222,144.78	241,154.06	92.1%
Net Income	162,216.57	158,729.04	102.2%

Reports

Director's Report

To: SWCCOG Board of Directors
From: Miriam Gillow-Wiles
Date: 8 July 2016

Comments: **National Association of Regional Councils, Annual Conference – Broadband Presentation**

I presented on Lessons Learned regarding Broadband Development at the National Association of Region Councils (NARC) on June 27th. While we may not have a functioning regional network currently, we can provide leadership based on the struggles we have/had with the SCAN. Other presenters discussed their regional networks, one, out of Connecticut could be provide an aspirational model for SCAN. This network provides a whole range of services for its members including:

- Finance Software
- Cloud Storage
- Cloud Storage specifically for LEO body cams
- VOIP
- Streaming video and storage of public meetings
- Reduced connectivity cost
- Reduced cost for IT support in member jurisdictions
- Human Resources Software (developing)
- Regional document management (developing)
- Cybersecurity services (developing)

Mountain Connect Broadband Conference

I attended Mountain Connect Broadband Conference in Keystone in early June. I learned quite a lot from other organizations, and networked with peers. NeoConnect and I had several meetings so work through the SCAN issues as well.

PTO

I will be taking the 18th and 19th of July off for PTO as well as August 11th and 12th.

Transportation Report

To: SWCCOG Board of Directors
From: Jessica Laitsch
Date: 8 July 2016

Comments: Transportation:

The TPR met on Friday, June 3, 2016. The discussion included:

- That the state is seeking feedback on lessons learned through the State Transportation Plan and on the investment needs inventory.
- That the state is kicking off a Together We Go outreach effort to dialogue with stakeholder groups and the public to proactively inform the planning process and report on progress made since the 2040 Statewide Transportation Plan was adopted. This effort is an opportunity to highlight CDOT achievements, enhance relationships through dialogue, and inform the next statewide planning effort through an on-going annual conversation.

The Together We Go telephone town hall for Southwest Colorado will be held Wednesday, July 13 beginning at 7:00 p.m. To register for the town hall event, text "CDOTSW" to 828282. Alternatively, the public may call in at 1-877-229-8493, and enter PIN 112034.

- A discussion about the alternative fuels program.
- An update on grant opportunities through the state.
- That the Ute Mountain Ute Tribe and CDOT signed an MOU to address communication and coordination of maintenance and engineering activities on highways that cross tribal lands.
- An update on CDO's current and upcoming projects.

Staff attended the National Regional Transportation Conference hosted by the National Association of Development Organizations. Highlights included:

- Showcase of the winners of the 2016 Excellence in Regional Transportation Awards, including opportunities to discuss projects related to several modes of transportation with various regional organizations.
- Overview of case studies related to multimodal planning both on a regional scale and within a rural community.
- Presentation on collecting data for project prioritization.
- Presentation on freight.
- Introduction to technologies and tools available to assist with transportation planning and how economic and land use decisions impact transportation.
- Update on federal surface transportation programs.

Transportation Report

Transit:

The next Transit Council meeting will be held Friday, July 15, 2016 at 9 a.m. at the Carnegie Building.

VISTA Report

To: SWCCOG Board of Directors

From: Shannon Cramer

Date: 8 July 2016

Comments:

Shared Services:

Staff has been continuing work on developing a partnership with the Southwest Colorado Community College (SCCC). We have heard back about possible pricing which would be as follows:

Class A CDL (160 hours) - \$4,000/person for a group of 4 participants
Class B CDL (40 hours) - \$1,500/person for a group of 4 participants
Class A Refresher (40 hours) - \$1,500/person for a group of 4 participants
Class B Refresher (10 hours) - \$400/person for a group of 4 participants

With us possibly providing funding to repair their training vehicle they would be willing to scholarship 50% per participant for training up to a total of \$48,000.

Recycling:

In the beginning of June staff attended the Colorado Association for Recycling's Summit in Grand Junction. It was an opportunity to network with others in the state, and learn about the various ways public and private haulers are facing recycling challenges. Staff attended sessions on local end market solutions, the cost of recycling, and rural recycling.

Staff take away thoughts:

- Using paint collected from HHW to make landfill cover, increasing life span of landfills
- Creating coloring/work books for child education that is specific for their area
- Source separation sees 2% contamination, while single stream sees 25% contamination
- Composting gives recycling centers a way to make money

There will be a Recycling Task Force meeting July 12th at 1:00pm in the Carnegie building to further discuss next steps on the adult education project funded through the CDPHE grant.

Discussion Items

Decision Items

2017 Preliminary Budget

To: SWCCOG Board of Directors
From: Sara Trujillo
Date: 8 July 2016

Comments: The 2017 preliminary budget that is being presented to you is a balanced budget projected to move the SWCCOG forward in accomplishing the approved focus goals in the areas of broadband, transportation, shared services, recycling, and building a partnership with 4CORE.

The following attachments include:

- Dues Breakdown

Notable aspects include:

- Member dues remain the same as 2016 at \$126,200 consisting of individual member contributions and the administrative assistant position. All dues categories, including member match and the fiber equipment repair fund, are based upon the board-voted formula of 20% divided evenly as a base, with the 80% remainder divided by population. Population figures are compiled from the DoLA County and Municipal Population Estimates for 2014. With population changes and a new COG member, each community will see a decrease in their individual dues.
 - In 2016, members opted to hold cash match in their own budgets for the grant match; this amount has not been invoiced and COG staff does not anticipate a request for these funds for the remainder of 2016. However, some match is likely to be requested in 2017 for DoLA grant cash match requirements.
 - The Dark Fiber Equipment Repair Fund will continue at \$15,000. In 2016, La Plata County held this funding with an IOU if the funding is needed. We expect the same for 2017. Ideally, staff would like to have enough funding from the Dark Fiber Leases to reduce the funding contributions from COG Members.
 - Dark fiber leasing is budgeted for all member participation at a 25/75 split (member/COG) in conjunction with the Broadband Planning Grant suggestion with the exception of the Town of Rico as Rico does not own any SCAN fiber nor did they participate in the SCAN grant.
 - Staff will apply for the following grants to support and advance 2017 focus goals:
 - DoLA Technical Assistance Grant, \$50,000
-

2017 Preliminary Budget

- EPA Grant for environmental education about recycling, \$70,000 (with a \$20,000 match requirement)
 - Broadband Infrastructure Grant as a continuation to our 2016 Broadband Planning Grant, \$1.1 million
-
- The Audit expense estimate was increased from \$6,500 to \$15,000 for a single audit with the assumed infrastructure grant being approved as this will put our federal funds over the threshold of \$750,000.
 - The Accounting Software expense includes the purchase of a government software system that is designed specifically for grant/project accounting. Staff feels this will be necessary if awarded a multimillion dollar infrastructure grant. Springbrook Software is specifically designed for local government accounting and is the software being researched. We also will research the ability to purchase licensing of a member's accounting software.
 - Staff is recommending moving to the Public Sector Health Care Group (PSHCG) that will reduce annual health care costs while providing the same, if not better, benefits for staff.
 - The All-Hazards Grants typical funding amounts have been reduced over the last several years. The budget reflects an estimated decrease to \$100,000 in the preliminary 2017 grant.

Upon approval of the 2017 final budget at the August 5, 2016 board meeting, each community will receive information detailing funds for the 2017 budget to help with individual member budgeting processes.

2017							
	Dues	Admin Staff	Grant Match	Fiber Equip Fund	SWTPR Dues	e-TICS	2017 Total
Archuleta	\$ 13,726	\$ 1,469	\$ 3,010	\$ 1,844	\$ 667	\$ -	\$ 20,717
Bayfield	\$ 4,754	\$ 509	\$ 1,043	\$ 635	\$ 341	\$ -	\$ 7,281
Cortez	\$ 11,609	\$ 1,242	\$ 2,546	\$ 1,559	\$ 457	\$ 4,200	\$ 21,613
Dolores County	\$ 3,024	\$ 324	\$ 663	\$ 401	\$ 437	\$ -	\$ 4,849
Dolores (Town)	\$ 2,967	\$ 318	\$ 651	\$ 394	\$ 305	\$ -	\$ 4,634
Durango	\$ 22,001	\$ 2,355	\$ 4,825	\$ 2,960	\$ 587	\$ 2,100	\$ 34,828
Ignacio	\$ 2,711	\$ 290	\$ 595	\$ 359	\$ 314	\$ -	\$ 4,269
La Plata	\$ 39,069	\$ 4,181	\$ 8,568	\$ 5,261	\$ 1,139	\$ 2,100	\$ 60,318
Mancos	\$ 3,455	\$ 370	\$ 758	\$ 460	\$ 329	\$ -	\$ 5,370
Pagosa	\$ 3,892	\$ 417	\$ 854	\$ 519	\$ 347	\$ -	\$ 6,028
Rico	\$ 2,181	\$ 233	\$ 478	\$ -	\$ -	\$ -	\$ 2,893
San Juan	\$ 1,972	\$ 211	\$ 433	\$ 260	\$ 410	\$ -	\$ 3,285
Silverton	\$ 2,638	\$ 282	\$ 578	\$ 349	\$ 316	\$ -	\$ 4,164
Total	\$ 114,000	\$ 12,200	\$ 25,000	\$ 15,000	\$ 5,649	\$ 8,400	\$ 180,249

2016							
	Dues	Admin Staff	Grant Match	Fiber Equip Fund	SWTPR Dues	e-TICS	2016 Total
Archuleta	\$ 14,012	\$ 1,506	\$ 3,086	\$ 1,852	\$ 667	\$ -	\$ 21,123
Bayfield	\$ 4,870	\$ 515	\$ 1,054	\$ 633	\$ 341	\$ -	\$ 7,413
Cortez	\$ 11,843	\$ 1,271	\$ 2,604	\$ 1,562	\$ 457	\$ 4,200	\$ 21,937
Dolores County	\$ 3,194	\$ 333	\$ 682	\$ 409	\$ 437	\$ -	\$ 5,055
Dolores (Town)	\$ 3,081	\$ 321	\$ 657	\$ 394	\$ 305	\$ -	\$ 4,758
Durango	\$ 22,361	\$ 2,411	\$ 4,941	\$ 2,965	\$ 587	\$ 2,100	\$ 35,365
Ignacio	\$ 2,818	\$ 292	\$ 599	\$ 359	\$ 314	\$ -	\$ 4,382
La Plata	\$ 39,470	\$ 4,267	\$ 8,743	\$ 5,246	\$ 1,139	\$ 2,100	\$ 60,965
Mancos	\$ 3,567	\$ 373	\$ 765	\$ 459	\$ 329	\$ -	\$ 5,493
Pagosa	\$ 3,994	\$ 420	\$ 860	\$ 516	\$ 347	\$ -	\$ 6,137
San Juan	\$ 2,070	\$ 211	\$ 432	\$ 259	\$ 410	\$ -	\$ 3,382
Silverton	\$ 2,721	\$ 281	\$ 577	\$ 346	\$ 316	\$ -	\$ 4,241
Total	\$ 114,000	\$ 12,200	\$ 25,000	\$ 15,000	\$ 5,649	\$ 8,400	\$ 180,251

SAVINGS SUMMARY	2016	2017	Total Savings
Archuleta	\$ 21,123	\$ 20,717	\$ 406
Bayfield	\$ 7,413	\$ 7,281	\$ 132
Cortez	\$ 21,937	\$ 21,613	\$ 324
Dolores County	\$ 5,055	\$ 4,849	\$ 206
Dolores (Town)	\$ 4,758	\$ 4,634	\$ 124
Durango	\$ 35,365	\$ 34,828	\$ 537
Ignacio	\$ 4,382	\$ 4,269	\$ 113
La Plata	\$ 60,965	\$ 60,318	\$ 647
Mancos	\$ 5,493	\$ 5,370	\$ 123
Pagosa	\$ 6,137	\$ 6,028	\$ 109
Rico	\$ -	\$ 2,893	\$ -
San Juan	\$ 3,382	\$ 3,285	\$ 97
Silverton	\$ 4,241	\$ 4,164	\$ 77

Dark Fiber Leasing

To: SWCCOG Board of Directors
From: Miriam Gillow-Wiles
Date: 8 June 2016

Comments: This was brought to the Board in June. At that meeting, the board decided that the revenue share would be 50-50, but optional for communities. This does not fit with the previous discussions of the SCAN dating back to 2011. Further it does not create a stable revenue source for the COG and the optional 50-50 split would require a dues increase. Also at this meeting the Board increased the dark fiber lease from \$60/strand/mile to \$110/strand/mile with a minimum of one mile. This is a step in the right direction. The older documents from 2011 list the cost per strand per mile at \$60; an increase was sorely needed after 5 years.

Attached are the following documents:

Background and Timeline

A brief overview of the grant, grant amounts for the communities, and a history of the 75%-25% revenue share.

DOLA Contract for SCAN

The original contract for the SCAN Grant. Please pay attention to the starred paragraph.

Summary of Minutes from Previous Dark Fiber Discussions

History of the minutes from previous discussions.

Telecom Committee Meeting Minutes November 2011

The first discussion of the 75%-25% revenue split.

Dark Fiber Lease November 2011

The contract from 2011 outlining the revenue share between the SWCCOG and City of Durango/La Plata County. This was approved at the November 2011 Board Meeting (see Summary of Minutes above).

SCAN 2015 Revenue and Expenses

A comparison of the Revenues and Expenses for the 2015 budget year.

Menu of Possible Services

A list of possible services available through the SCAN. Some of these have been discussed before, some have not, but all will take funding to provide. These will help reduce overhead and/or provide services for the Members.

Dark Fiber Leasing

Dark Fiber Revenue Breakdown

A spreadsheet of revenue for COG and member jurisdictions

Contracts Between SWCCOG-Member Jurisdictions and SWCCOG-ISP

These are the same contracts from June. The first one will allow the COG to be the leasing agent for the SCAN dark fiber. The second is a master agreement between the COGs and ISPs to lease infrastructure. These are both draft contracts and are open to updating to fit Members' needs.

There are only bits and pieces to glean historical information as to the beginnings of the dark fiber revenue sharing split, even though revenue sharing for dark fiber leases has been a discussion for many years. After significant review of both the paper and electronic files by Jessica and Miriam, and reaching out to Legal, we found the original dark fiber lease agreement (unsigned) and the emails discussing the development of the contract between the SWCCOG and City of Durango from 2011. This original contract has listed a 75-25 split, COG-Durango. The Board needs to be aware of the following, and reconcile the former contract and subsequent policies with the financial needs of the SWCCOG.

- In March 2013 the final "Resolution and Policy" was put forth and passed with a 5% COG-95% Member split.
- In October of 2013, there was a check to the City of Durango for \$7470 with the reference line of "2013 Agreement" and a memo line of "Dark Fiber Billing for FY 2013 75%/25% split- Based on COG agreement".
- As a result of this, when updating the SCAN Policies in 2014, staff changed the former 5-95 revenue split to match existing operations of the 25-75 split for SCAN installed fiber.
- Realistically, the 25-75 split is not enough funding for the member jurisdictions expectations of the SCAN management. Anything less than 75% puts the SCAN network in jeopardy and continues the likelihood of increases for COG members. If the revenue share of 75% COG had started in 2016 with 2 strand at one mile each, the COG would not have had to leverage the fee of \$15,000 for the Fiber Equipment Repair Fund.

Staff Recommendation:

- Approve the COG-Member and COG-ISP agreements
- Set revenue share at 75% COG – 25% Member

CMS Contract Routing # <u>18373</u>
Vendor #
CFDA # N/A

**GRANT CONTRACT
ENERGY AND MINERAL IMPACT ASSISTANCE PROGRAM**

THIS CONTRACT, made by and between the State of Colorado for the use and benefit of the Department of Local Affairs, 1313 Sherman Street, Denver, Colorado 80203 hereinafter referred to as the State, or the Department, and the Southwest Colorado Council of Governments, 295 A Girard Street, Durango, Colorado 81303, hereinafter referred to as the Contractor.

WHEREAS, authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this Contract in Fund Number 153, Appropriation Code Number 128, Org. Unit FAA0, GBL 0MD5, Contract Encumbrance Number F10MLG6832; and

WHEREAS, required approval, clearance and coordination have been accomplished from and with appropriate agencies; and

WHEREAS, the State desires to assist political subdivisions and state agencies of the State of Colorado that are experiencing social and economic impacts resulting from the development, processing, or energy conversion of minerals or mineral fuels; and

WHEREAS, pursuant to sections 34-63-102, C.R.S., the Local Government Mineral Impact Fund has been created, which fund is administered by the Department of Local Affairs, herein referred to as the "Department" through the Energy and Mineral Impact Assistance program; and

WHEREAS, pursuant to section 34-63-102(5)(a)(I), C.R.S., the Executive Director of the Department is authorized to make grants from the Local Government Mineral Impact Fund to political subdivisions, including public schools, for the planning, construction and maintenance of public facilities and for public services; and

WHEREAS, the Contractor, a political subdivision or state agency eligible to receive Energy and Mineral Impact Assistance funding, has applied to the Department for assistance with the construction of the Southwest Colorado Access Network regional telecommunications infrastructure improvement project, as further described in the attached Exhibit A, herein referred to as the "Project"; and

WHEREAS, the Executive Director of the Department desires to distribute said funds pursuant to law; and

WHEREAS, the Executive Director wishes to provide assistance in the form of a grant from the Local Government Mineral Impact Fund to the Contractor for the Project upon mutually agreeable terms and conditions as hereinafter set forth;

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this Contract, the State and the Contractor agree as follows:

1. **Scope of Services.** The Contractor shall do, perform, and carry out, in a satisfactory and proper manner, as determined by the State, all work elements as indicated in the "Scope of Services" section of Exhibit A, attached hereto and incorporated by reference herein.
2. **Responsible Administrator.** The performance of the services required hereunder shall be under the direct supervision of Ed Morlan, Executive Director, an employee or agent of the Contractor who is hereby designated as the "Responsible Administrator" of the Project. At any time, the Contractor may propose, in writing, and seek the State's approval of a replacement Responsible Administrator, in accordance with paragraph 8.b.ii) of this Contract. The State, in its sole discretion, may direct that Project work be suspended in the event the current Responsible Administrator ceases to serve as such prior to the approval by the State of a replacement Responsible Administrator.
3. **Time of Performance.** This Contract shall become effective upon approval by the State Controller or designee (the "Effective Date") and extend through the completion date set forth in the "Time of Performance" section of Exhibit A. Performance of this Contract shall commence as soon as practicable after the Effective Date of this Contract; provided however, that the Contractor shall not be entitled to payment for any performance rendered before the Effective Date and shall not be eligible for reimbursement of any expenses incurred before the Effective Date. The Contractor shall undertake and perform its obligations hereunder as set forth in Exhibit A. The Contractor agrees that time is of the essence in the performance of its obligations under this Contract.

EXHIBIT A

SCOPE OF SERVICES

1. PROJECT DESCRIPTION, OBJECTIVES AND REQUIREMENTS

The Project consists of the construction of the Southwest Colorado Access Network (SCAN) regional telecommunications infrastructure improvement project for the local governments in Southwest Colorado. The Southwest Colorado Council of Governments (SWCCOG) (Contractor) is the Responsible Administrator for the Project on behalf of the local governments. The regional Project is comprised of individual build-outs in thirteen separate communities within the five counties of Southwest Colorado, also known as the Colorado Department of Local Affairs Planning and Management Region 9. Telecommunications infrastructure will be installed in each participating community and will deliver high speed broadband services within government and public buildings and facilities, and between participating communities, as the budget allows. The recipients of the telecommunication improvements include the Cities of Cortez and Durango; the Towns of Bayfield, Dolores, Ignacio, Dove Creek, Pagosa Springs, Rico and Silverton; and the Counties of Archuleta, Dolores, La Plata and San Juan.

While each of the local Projects has different program aspects, benefits include: redundant off-site backup of critical data; failover of public safety and homeland security dispatch services between the counties; direct link between hospitals and health providers; and sharing of resources (IT staff) and local job opportunities. Many applications are already shared, such as police records. The proposed system will make the sharing of information more reliable. Since local governments will be the anchor tenant of such a network, additional fiber may be laid along with that required by SCAN to enable the leasing of such fiber to private Internet Service Providers (ISPs) and Private Telecommunications Companies. This will increase the economic development potential of the entire region while creating new revenue streams for the communities of southwest Colorado. Up-front public investment is difficult in the current economic climate, but by aggregating demand and bundling purchases, it is anticipated that the cost of telecom services will decrease while network labor and maintenance costs can be shared by all partners.

The passage of State of Colorado Senate Bill SB 05-152 allows for public ownership of telecommunication networks.

SCAN will result in greatly increased broadband connectivity among public offices and important community agencies throughout southwest Colorado. Government, law enforcement and public safety agencies will enjoy faster, more reliable transmission speeds as well as enhanced security as the need for critical communications and data transfer between agencies increases.

Individual community projects will be designed by a qualified consultant(s) selected by the SWCCOG through a formal RFP or competitive process. Project design will be performed for each community project using industry and SWCCOG-approved project standards and specifications.

Prior to construction or purchase of materials the SWCCOG will enter into Intergovernmental Agreements with each local government partner that will dictate and describe the responsibilities of the SWCCOG and the responsibilities of the local government. The IGAs will include, but not be limited to, ownership of the Project improvements, procurement and construction responsibilities, financial commitments, financial management, operations and maintenance responsibilities and other pertinent issues.

The individual local governments will manage, develop and carry out construction of the Project in conformity with the plans and specifications mutually agreed on by the local government and the SWCCOG. The Project will be owned by the individual local governments. The individual local governments will be responsible for long-term maintenance of the Network, and will be required to operate SCAN in accordance with the policies and procedures of the State of Colorado.

In the event that one or more of the local government partners declines to participate in the Project, the funds for that local government's project may be utilized by other partners to expand their own community Projects. This will require the participating community's local match to increase accordingly.

Eligible expenses include the purchase and installation of fiber optic cable, switches, routers, computer radio equipment; construction materials, ROW expenses; engineering and design services, project coordination, administrative, operational and program services performed by the SWCCOG, its contractors and/or the local government partners. Individual local government partners or the SWCCOG may enter into leases for dedicated fiber and/or conduit with owners of existing telecommunications systems in lieu of building new Fiber Optic Telecommunication Networks. The leases will be in the format of Irrevocable Rights of Use for the local government partner or SWCCOG

Energy and Mineral Impact Assistance program funds in the amount of THREE MILLION AND XX/100 Dollars (\$3,000,000) are provided under this Contract to finance Project costs. The Contractor shall provide ONE MILLION AND XX/100 Dollars (\$1,000,000) in Project financing from sources other than State funds, and, in any event, is responsible for all Project cost in excess of THREE MILLION AND XX/100 Dollars (\$3,000,000).

A construction contract shall be awarded to a qualified construction firm through a formal selection process with the Contractor being obligated to award the construction contract to the lowest responsible bidder meeting the Contractor's specifications.

A contract shall be awarded to a qualified firm through a formal RFP or competitive selection process.

A contract shall be awarded to a qualified vendor or firm through a competitive selection process with the Contractor being obligated to award the contract to the lowest responsible bidder meeting the Contractor's specifications.

If cost savings are incurred while completing the Project, the State may require that those savings be split on a pro-rata basis between the State and the Contractor.

During a period of ten (10) years following the date of closeout of the Project by the State, the Contractor may not change the ownership of the equipment. If the Contractor decides to change the ownership of the equipment to an entity which the State determines does not qualify in meeting the original intent of the Project, the Contractor must reimburse to the State an amount equal to the current fair market value of the equipment, less any portion of the value attributable to expenditures of non Energy Impact funds for acquisition of and improvements to, the equipment. At the end of the ten (10) year period following the date of completion and thereafter, no State restrictions on ownership of the equipment shall be in effect.

Copies of any and all contracts entered into by the Contractor in order to accomplish this Project shall be submitted to the Department of Local Affairs upon execution, and any and all contracts entered into by the Contractor or any of its subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

The Contractor agrees to acknowledge the Colorado Department of Local Affairs in any and all materials or events designed to promote or educate the public about the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

2. ENERGY AND MINERAL IMPACT

Current information from the Colorado Labor Market (12- 8- 09) indicates that region-wide, there are 13 major employers in the oil and gas extraction industries. In 2007 (most recent data available) there were 1,277 people employed in the mining and utilities sector, with an estimated 3,320 people employed in supporting industries. This employment sector also offers the highest average annual wages in the region.

This project has a direct relationship to the challenges created by the Energy/Mineral Industry. The economy in southwest Colorado is heavily dependent on the extractive industries. In doing so it creates a "hollow economy", that is, an economy which may be growing and appear prosperous, but which has lost its diversity and stability and is no longer protected from collapse of the dominating economic sector. With the projected depletion of oil and gas in the region, many of these jobs will go away, creating a hollow economy in which base industries are declining. Since extractive industries are not stable, this "hollow economy" effect places a tremendous burden of risk on people and communities. By constructing this publicly owned Open Access Network the Region will create an asset for business growth and job development opportunities that will protect the local economy from this over dependence on the industry.

3. TIME OF PERFORMANCE

The Project shall commence upon the Effective Date and shall be completed on or before December 31, 2013. In accordance with paragraph 8.b.i. of this Contract, the Contractor may request an extension of the time for performance by submitting a written request, including a full justification for the request, to the State at least thirty (30) days prior to the termination of the performance period. If the State, in its sole discretion, consents to an extension, the State shall grant such extension in accordance with paragraph 8.b.i. of this Contract.

4. BUDGET
Revenues

Energy/Mineral Impact - GRANT	\$3,000,000
Contractor Funds	<u>\$1,000,000</u>
Total	\$4,000,000

Expenditures

Purchase/Installation of Telecommunications Equipment/Infrastructure/Appurtenances	\$3,600,000
Engineering Services/Project Management/Program Management & Operations	<u>\$ 400,000</u>
Total	\$4,000,000

5. REMIT ADDRESS: (Address to where payments are to be sent)

295 A Girard Street

Durango, CO 81303

6. DISTRIBUTION SCHEDULE

Grant Payments

\$2,700,000	Available for interim payments reimbursing the Contractor for actual expenditures made in the performance of this Contract. Payments shall be based upon properly documented financial and narrative status reports detailing expenditures made to date.
<u>\$ 300,000</u>	Available for final payment to be made to Contractor upon the completion of the Project and submission by the Contractor of final financial and narrative status reports documenting the expenditure of all Energy/Mineral Impact Assistance funds for which payment has been requested.
\$3,000,000	Maximum Available

7. PAYMENT PROCEDURE

The State shall establish billing procedures and pay the Contractor for actual expenditures made in the performance of this Contract based on the submission of statements in the format prescribed by the State. The Contractor shall submit requests for reimbursement, setting forth a detailed description of the amounts and types of reimbursable expenses.

Payments pursuant to this Contract shall be made, in whole or in part, from available funds encumbered for the purposes of this Contract. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds. In the event this Contract is terminated, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation shall be recovered from the Contractor by deduction from subsequent payment under this Contract or other contracts between the State and the Contractor, or by the State as a debt due to the State.

8. CONTRACT MONITORING

The State shall monitor this Contract on an as-needed basis, as determined by the State in its sole discretion. The State or any of its duly authorized representatives shall have the right to enter, inspect and examine the Project upon twenty-four (24) hours advance written notice to the Responsible Administrator.

9. REPORTING SCHEDULE

At the time the Contractor submits quarterly payment requests, the Contractor shall submit, on a quarterly basis, financial and narrative status reports detailing Project progress and properly documenting all to-date expenditures of Energy and Mineral Impact Assistance funds. The form and substance of such status reports shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of the Contractor and failure to comply may result in the delay of payment of funds and/or termination of this Contract. Required reports shall be submitted to the State at such time as otherwise specified by the State.

CONTRACT AMENDMENT

Amendment #: 2	Encumbrance #: F10MLG6832
Original Contract CMS or CLIN #: 18373, 50937	Amendment CMS #: 55578

1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between the **SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS** (hereinafter called "Grantee" or "Contractor" or "SWCCOG"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Local Affairs, Division of Local Governments, (hereinafter called the "DOLA").

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3) FACTUAL RECITALS

The Parties entered into the Contract for/to design and construct the Southwest Colorado Access Network regional telecommunications infrastructure improvement project. This amendment modifies line items in the project budget. The SWCCOG is requesting permission to transfer \$50,000 from the Purchase/Installation (Construction) budget line to the Project Design/Management budget line. Project management, design services and program management costs have increased due to more work than anticipated with individual communities in order to get the projects designed and implemented, and work with EagleNet that was unanticipated.

4) CONSIDERATION - COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment. If applicable, such Special Provisions are attached hereto and incorporated by reference herein as **Exhibit Insert Exhibit # or letter**.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

6) MODIFICATIONS.

The Contract and all prior amendments thereto, if any, are modified as follows:

- a. Exhibit A, Scope of Services, Section 4, Budget: is modified by deleting the current Project Budget:

<u>Revenues</u>		<u>Expenditures</u>	
Energy/Mineral Impact - GRANT	\$3,000,000	Purchase/Installation of Telecommunications Equipment/Infrastructure/Appurtenances	\$3,580,000
Contractor	<u>\$1,078,179</u>	Engineering Services/Project Management/Program Management & Operations	
			<u>\$498,179</u>
Total	\$4,078,179	Total	\$4,078,179"

and inserting the following new Project Budget in lieu thereof:

<u>Revenues</u>		<u>Expenditures</u>	
Energy/Mineral Impact - GRANT	\$3,000,000	Purchase/Installation of Telecommunications Equipment/Infrastructure/Appurtenances	\$3,530,000
Contractor	<u>\$1,078,179</u>	Engineering Services/Project Management/Program Management & Operations	<u>\$548,179</u>
Total	\$4,078,179	Total	\$4,078,179"

7) START DATE

This Amendment shall take effect on the later of its Effective Date or April 26, 2013.

8) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9) AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

CONTRACTOR
SOUTHWEST COLORADO COUNCIL OF
GOVERNMENTS

By: Bryce Cooper
Name of Authorized Individual

Title: Chairperson
Official Title of Authorized Individual

[Signature]
*Signature

Date: 5/3/13

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR

DEPARTMENT OF LOCAL AFFAIRS

By: [Signature]
Reeves Brown, Executive Director

Date: May 21, 2013

PRE-APPROVED FORM CONTRACT REVIEWER

By: [Signature]
Teri Davis, Financial Assistance Programs

Date: 5/20/13

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER

Robert Jaros, CPA

By: [Signature]
Barbara M. Casey, Controller Delegate

Date: 5-24-13

CONTRACT AMENDMENT

Amendment #: 1	Encumbrance #: F10MLG6832
Original Contract CMS or CLIN #: 18373	Amendment CMS #: 50937

1) PARTIES

This Amendment to the above-referenced Original Contract (hereinafter called the Contract) is entered into by and between the SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS (hereinafter called "Grantee" or "Contractor"), and the STATE OF COLORADO (hereinafter called the "State") acting by and through the Department of Local Affairs, Division of Local Governments, (hereinafter called the "DOLA").

2) EFFECTIVE DATE AND ENFORCEABILITY

This Amendment shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse Contractor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3) FACTUAL RECITALS

The Parties entered into the Contract for/to design and construct the Southwest Colorado Access Network regional telecommunications infrastructure improvement project. This amendment modifies line items in the project budget.

4) CONSIDERATION - COLORADO SPECIAL PROVISIONS

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Amendment. The Parties agree to replacing the Colorado Special Provisions with the most recent version (if such have been updated since the Contract and any modification thereto were effective) as part consideration for this Amendment. If applicable, such Special Provisions are attached hereto and incorporated by reference herein as **Exhibit Insert Exhibit # or letter**.

5) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Contract, and the Contract and all prior amendments thereto, if any, remain in full force and effect except as specifically modified herein.

6) MODIFICATIONS.

The Contract and all prior amendments thereto, if any, are modified as follows:

- a. **Exhibit A, Scope of Services, Section 4, Budget:** is modified by deleting the current Project Budget:

<u>Revenues</u>		<u>Expenditures</u>	
Energy/Mineral Impact - GRANT Contractor	\$3,000,000 <u>\$1,000,000</u>	Purchase/Installation of Telecommunications Equipment/Infrastructure/Appurtenances Engineering Services/Project Management/Program Management & Operations	\$3,600,000
Total	\$4,000,000	Total	<u>\$400,000</u> \$4,000,000"

EIAF #6832 SWCCOG Telecommunications Infrastructure

and inserting the following new Project Budget:

<u>Revenues</u>		<u>Expenditures</u>	
Energy/Mineral Impact - GRANT Contractor	\$3,000,000 <u>\$1,078,179</u>	Purchase/Installation of Telecommunications Equipment/Infrastructure/Appurtenances Engineering Services/Project Management/Program Management & Operations	\$3,580,000
Total	\$4,078,179	Total	<u>\$498,179</u> \$4,078,179"

7) START DATE

This Amendment shall take effect on the later of its Effective Date or December 15, 2012.

8) ORDER OF PRECEDENCE

Except for the Special Provisions, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Contract, the provisions of this Amendment shall in all respects supersede, govern, and control. The most recent version of the Special Provisions incorporated into the Contract or any amendment shall always control other provisions in the Contract or any amendments.

9) AVAILABLE FUNDS

Financial obligations of the state payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, or otherwise made available.

THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

**CONTRACTOR
SOUTHWEST COLORADO COUNCIL OF
GOVERNMENTS**

By: Tom Yennereff
Name of Authorized Individual

Title: Chair SWCCOG
Official Title of Authorized Individual

Tom Yennereff
*Signature

Date: 12/7/12

**STATE OF COLORADO
John W. Hickenlooper, GOVERNOR**

DEPARTMENT OF LOCAL AFFAIRS

By: Reeves Brown
Reeves Brown, Executive Director

Date: 12/12/12

PRE-APPROVED FORM CONTRACT REVIEWER

By: Teri Davis
Teri Davis, Financial Assistance Programs

Date: 12/12/12

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER
David J. McDermott, CPA**

By: Barbara M. Casey
Barbara M. Casey, Controller Delegate

Date: 12-17-12

Background and Partial Timeline of SCAN and Revenue Sharing

1. SB 232 was a onetime grant cycle set aside by the state legislature in 2010. Projects needed to be:
 - Regional in nature
 - Submitted by counties and municipalities receiving federal mineral lease funds.
2. During brain storming sessions by Region 9 EDD members, the idea of developing improved broadband opportunities became the focus of a project and subsequent application.
3. Region 9 provided the staff and financial assistance to hire a consultant(s) to develop the individual anchor institution middle plans and cost estimates.
4. Region 9 developed the application, which was subsequently awarded in January 2010 for \$3 M with a \$1 M match. This 75%-25% split was the minimum match requirement.
5. Between 2010 and March 2014, planning, engineering, and infrastructure development occurred.
 - Final report disbursements:
 - Town of Ignacio \$32,525
 - City of Cortez \$1,133,315
 - City of Durango/La Plata County \$686,405
 - Town of Dolores \$48,581
 - Town of Silverton/San Juan County \$192,402
 - Town of Dove Creek /Dolores County \$150,809
 - Town of Mancos \$65,701
 - Town of Bayfield \$580,799
 - Town of Pagosa Springs/Archuleta County \$647,356
 - Contingency \$ 16,277
 - \$40,000 moved from Admin to Construction
 - Total Budget \$ 3,554,171
 - Administration - \$522,784
6. Operations of SCAN and costs were to be more fully developed as the project was completed. The grant contract requires the beneficiaries to operate SCAN.
7. A 75:25 proportion of leased fiber revenues was the basis of the operating income. At the time of completion there was not yet a budget. Below is a timeline chronicling the SCAN revenue sharing
 - a. Documents date back to 2011 with the 75% COG, 25% Community revenue share. Earlier documents contemplate revenue shares, but at that time did not have percentages called out.

- b. November 2011 – Dark Fiber Lease agreement between City of Durango and SWCCOG approved by the COG board at 75% COG, 12.5% Durango and 12.5% La Plata County.
 - c. In March 2013 SCAN Policies were adopted, in that the revenue share was 5% COG, 95% Member. This revenue share was pushed by the City of Cortez during the policy development.
 - d. In October 2013 the SWCCOG started SCAN dark fiber leasing for the City of Durango, the revenue share from this was implanted at 25% COG, 75% Durango. The COG has no record of any contracts for these services
 - e. November 2014, COG Staff created new SCAN policies, with a 25 COG, 75 Member revenue share, this was approved by the Board.
 - f. January 2015, Staff brought forward a revenue share agreement with the 25 COG, 75 Member revenue split. This was tabled until members could discuss with their respective jurisdictions.
 - g. August 2015, staff brought forward the revenue share agreements from January 2015. These were again tabled and to be added to the regional broadband plan.
 - h. June 2016, as the SWCCOG nears the end of the regional broadband plan, and with almost all COG members opted out of SB05-152, ISPs wanting to lease infrastructure, and needing to develop stable revenue source for the SWCCOG, Staff brought forward contracts for revenue share at 75% COG, 25% Member, and a contract for the COG to be the leasing agent of the communities' SCAN infrastructure.
8. As a part of the Regional Broadband Plan process and development contract NeoConnect has developed a refined operational plan

Summary of Minutes

04 November 2011

Approval of invoicing & payment collection for the City of Durango's Dark Fiber Lease Agreements/IGA
Ernie Williams said this was discussed by the Technical Committee, and they don't want this to set a precedence for how funds are collected - there may be times when the 75%/25% needs to be adjusted so that the COG is collecting more. Ed Morlan said that wasn't the intention.

Willy Tookey made a motion to approve the IGA. Shane Hale seconded and the motion passed unanimously.

03 August 2012

General Manger Services Contract

Jason explained that the hiring committee had met with Dr. Rick Smith to review his proposal for extending the General Manager Services contract. The committee was not comfortable with undertaking a performance review but it did find the continuation of the position necessary for the progress of the project. Greg asked about the statement in the resolution that the funding of the contract extension would come from project savings. John clarified that he wrote that statement based on discussion of the telecom budget that showed savings in certain telecom items, most notably in large line item for MSC project management. Laura Lewis Marchino confirmed the savings compared to budget in certain telecom line items. Ed explained his plan to move dark fiber leaser revenue to the operations budget and use it to help finance operational expenses for the rest of the year. Greg expressed his continued reservations about authorizing \$20,000 in new expenditures for GM Service at this time based on this level of information about available funding. Bryce Capron noted the importance of reaching out to all the possible participants in the project in all of the communities. Jason shared this interest. Chris La May suggested a one month extension and revisiting the matter in September. Dr. Rick explained that his work to fulfill the existing contract runs thru August. 10. He is agreeable to a 4 month extension and then working pro-bono for the end of December. Greg said he liked Chris' idea for a one month extension right now and then revisit the topic again in September. Shane Hale indicated he also supported the approach. Dr. Rick indicated he is amenable to this proposal. Ed and Laura noted that one of the main tasks in the next month will be to coordinate on the SCAN operation budget. Greg Schulte moved that the COG make a one month extension on the GM services contract with Arona Enterprises from August 11 to Sept. 10 for \$5,000 and Shane Hale seconded it. Dick White suggested that the COG have a contingency plan if the COG doesn't further extend the contract. Tom said the group would come back to the topic of a contingency plan. The motion passed, with all those voting in favor.

05 October 2012

SCAN Implementation and Operation Budgets

Returning to the discussion section, Ed explained the philosophy behind the recommended separation of the SCAN Implementation and Operation Budgets and some of the steps that would need to be taken, including the public hearing for establishment of the new account for the operating budget. Ed indicated that he could go back and re-work the allocation of future GM service contracts costs between SCAN Implementation and Operation Budgets for 2012 at the Board's direction but that he would not recommend using grant funds for the GM services in 2013. He suggested using other sources of revenue for this item, including the revenue from dark fiber leases. Joanne asked for more information about the GM is doing under the SCAN 5 implementation budget and under the operation budget. Dr. Rick Smith explained that under the grant, he helps oversee the technical implementation, the build-out of the project. When it is built, the focus shifts to maintaining its functionality and developing the business arrangements to support it. Joanne asked if a clean separation can be made now. Ed said it is difficult to do so, but necessary.

01 February 2013

Operations of SCAN Network on Third Reading

Discussion of E-Rate: The SWCCOG's ability to serve school districts and other Tier II organizations was discussed. The school district was concerned about their ability to participate in the SCAN network without E-rate capabilities. Staff found out it would not preclude them from access to other funding from E-Rate.

- Maintenance is primary goal, we are NOT charging for service.
- SWCCOG does not want to be construed as a provider
- The SCAN has to provide open access out of the network, which providers have agreed to.
- Some concerns this may be against the spirit of the project in terms of aggregating demand and therefore connectivity.
- Concern for school districts as "non-viable, direct consumers"

The following changes to the Operations Policy were requested by the board:

- The word "must" in definition of unserved or underserved changed to "should strive to"
- Change "broadband" to "advanced telecommunication systems"
- Under Ramp Fee, bullets 2 and 3 are combined
- Under Leased Assets we based the fees on 5% of Gross revenue
- Capability to offer E-Rate to Tier II

Motion: Bobby Lieb "Approve as amended," Second: Ryan, Approved Yes

09 January 2015

MOU for Dark Fiber Leasing:

A basic MOU template was created for dark fiber leasing. MOU can be modified to accommodate specific community details. The board would like to see each individual contract for approval versus having a basic template for all communities as verbiage used would need to be changed for each entity and contract.

Motion to table this item until the February meeting where a draft can be put in front of respective boards for feedback: Michael Whiting, Second: John Egan. Passed by a unanimous voice vote.

06 February 2015

Dark Fiber Lease MOU:

This item was tabled at the last SWCCOG board meeting to be readdressed now. The MOU agreement would be implemented individually between COG and entity; the MOU document presented would only service as a template. There were questions about an opt-in versus mandate policy for use of the SCAN network, which led to questions about the original content of the SCAN contract and board decisions made at that time. Staff will find original SCAN contract and documents, board meeting minutes, any guidance documents for SCAN use, and facts and history to present this information at the March board retreat. Board would like to know how many dark fiber strands are out there available to be leased and what kind of revenue this would create.

Lee San Miguel requested maps of what Ignacio currently has, which Miriam will send on a thumb drive.

Motion to table this item until the board is presented with a clear understanding of the SCAN project:

Julie Westerndorff, Second: Lee San Miguel. Passed by a unanimous voice vote.

07 August 2015

Dark Fiber Leasing:

The Dark Fiber Leasing MOU was initially brought to the Board in January 2015. During that discussion there was a significant amount of discussion about what this meant for the communities and the COG. At the time it was tabled for the members to take back to their respective Boards/Councils and to come back for a decision. However, this item was not put back on the agenda, and has had no further discussion since January. In 2013 a 95/5% split was decided although, in practice, the split has always been 75/25. The 25% portion to the COG helps with COG expenses and time spent on SCAN endeavors. Shane Hale said Cortez is already doing this billing on their own and it would not be in their best interest financially to pay someone else to do invoicing. Chris LaMay said there would need to be a better justification for the cost for Bayfield to be onboard; a value proposition would need to be presented. Dick White mentioned that this issue will have some resolution towards the end of the broadband planning grant. The grant will be concluding around October 2016. There could possibly be an opt-in option as a solution. The board decided to leave this item as is until the end of the broadband planning grant.

SWCCOG Page 1 of 6 Committee
Wednesday, November 2, 2011, 2011 3-4:30pm
Region 9 E.D.D Office
Meeting Summary

I. Welcome and Introductions

- Ed Morlan, Region 9 E.D.D.
- Caitlin Riggs, Region 9 E.D.D.
- Paul Recanzone, OHivey
- Eric Pierson, City of Durango
- Jason Wells, Town of Silverton
- Rick Smith, City of Cortez
- David Bygel, La Plata County
- Ernie Williams, City of Cortez
- Shane Hale, City of Cortez
- Bill Bishop, Bayfield School District
- Frank Ohrtman, Broadband Data & Development Program
- Miriam Gillow-Wiles, Town of Ignacio
- Brian Crane, Ignacio School District
- David Mitchem, Town of Pagosa Springs
- Bryan Crawford, Pueblo Community College
- Larry Escude, Pagosa Springs Mountain Hospital
- Frank Ohrtman, Broadband Data & Development Program

II. Discussion

1.) Summary/Minutes from October 12, 2011 meeting

- No comments/suggestions.

2.) Draft RFP/Scope of Work/Budget for SCAN General Manager – Ed

- This discussion stated the possibilities of the candidates which will include Paul Recanzone and Dr. Rick Smith. Paul and Rick will submit a joint proposal. There were some concerns for this manager job and the possible conflict of interest in electing Paul. The conflict of interest issue raised awareness to the fact of the candidates should not be directly part of the COG. Paul intended to finish the implementation project with Mid-State and hopefully have more opportunity to use the Business Sustainability plan spreadsheet. As for Dr. Rick Smith his plan was to resign from the COG during the next SWCCOG meeting, November 4th, 2011. Both of these concerns are for the COG to decide if there is a conflict of interest and to see the input. It was also mentioned that there will be a selection committee, "screening committee", which includes: Rick Smith; City of Cortez, Eric Pierson; City of Durango, Greg Schulte; Archuleta County, David Bygel; La Plata County, Jason Wells; Town of Silverton, and Ed Morlan; Region 9 E.D.D. as a staff support role.

3.) Proposals for COG to invoice, collect & disburse City of Durango contracts

- Regarding the Dark Fiber IGA there were last minute changes in the payment/collection plans between the City of Durango and the La Plata County. The grant is the source of revenue and is used to build the infrastructure since DoLA is funding 75% and local match will fund 25% this is how the payment will split, 75% to 25%.
- Another factor concerning leasing services is that once Cortez leases this service they may have more overhead and will have to be factored in to come up with a new formula. This will result in having more expenses to be counted

into the revenue which will no longer make it 75:25 and this will need to be considered when constructing the sustainability plan.

- The group discussed where the IGA should have a one year term, an action item for the COG meeting.

4.) Report on Shared Infrastructure RFP – Selection Committee

- This RFP, which closed November 4th, 2011, was intended to target the following communities: Bayfield, Pagosa Springs, Silverton, and Dove Creek, but is not confined to those four locations because joint build opportunities are available to all communities within in the region. Mancos was also considered to be included but have not shown interest yet.
- In regards to hearing back from vendors most haven't responded, except for Fast Track, USA Communications, and Vidion. Fast Track expressed they will not be responding to this RFP with the assumption that they will be negotiating with the committee on the response to first RFP; their only interest is to reach out and hook up to their existing infrastructure in Bayfield. They do have a gap between Durango and Bayfield and are interested in a joint build in those terms. USA Communications have expressed interest in joint-building with Pagosa Springs, and being a service provider for Cortez. Brainstorm was another vendor that responded, there answer was vague with a "may or may not" respond. They were participants in the original response, so they are going to be included. As for Pagosa Springs, they have used double the budget that was allowed and if there isn't going to be a joint build then they will need to find another solution. Bayfield has the budget to build and if there is a good response than some of their budget can be redirected. Dove Creek is not anticipating anyone being very interested in Dove Creek's cable system. If Century Link turns out to not be interested and the communities end up coming short on funds, than the following are some options:
 - First option is to Joint build with Farmers.
 - Second option is to use the multi-mode fiber that runs with county and schools that Farmers has mentioned, but has failed to provide documentation.
 - Third option is for Pagosa Springs to joint venture, and if that fails they could tap into residual funds with the Community College.
- Half of the Community College's budget has been reallocated to the Hub in Durango. Ed hopes to have other proposals to bring them that will allow their involvement in the project. The initial idea is that these funds are to close the gaps in the budget. There are some other options to close the gabs which include: design changes, reallocate funds, and change the funding to close the gaps.
- The recommended Shared Infrastructure selection committee includes the following: Chris LaMay, Town of Bayfield, David Mitchem, Town of Pagosa Springs, Willy Tookey, San Juan County, Ernie Williams, Dolores County, Paul Recanzone and Ed Morlan would act as staff support. This committee is tailored to pull people from the different communities where the funds would be coming from. In the past the selection committee members were provided a

written criteria and a summary of the past bids. Paul Recanzone, acting as staff support, intends to do a summary on this and will also include a judging rubric for scoring.

5.) Report on 2011 & 2012 Budget

- The revised budget went out and will be on the agenda for the COG meeting, Friday November 4th, and is only looking at the telecom portion of it. This new version will have \$3600 coming in for those contracts. There are other new line items inserted and they are "Sales" category and the "Cost of Sales" which includes \$40,000 and 25% will be for the Cost of Goods. Also, the General Manager position will potentially increase the revenue, but to have enough money for this position there were two things that were reduced. First, the Region 9 salary was reduced by roughly \$1000, and second was Sales.

6.) Update on SCAN Communities, Community Updates/Budget & Implementation

- Ed provided an update on SCAN communities. Ed stated that Mid-state sends an itemized bill that contains basic information, like who it's from and what it is. Another task he is still working on is sending out information to the different towns and counties itemizing the work to date. Ken Charles also stated to Ed that he wanted to make sure that there is communication with all the towns/communities about the budgeting for next year. Most of the towns that have put up the money in the beginning have been used to pay those bills. Based on original 25% it will be clearer to see as the costs are incurred.
- Concerning Ignacio the costs were way less than anticipated the original budget was around \$10,000. They already have the school loop and library hooked up, last is the fire station and beyond that it is done.
- Miriam became concern after her meeting with Paul and Brian when they overviewed the outlay of the fiber; they were not impressed. Their biggest concern was that they do not want the town to become liable with more than they bargained for concerning fiber that does or doesn't exist. Brian is aware of the broken fiber and the need to identify and repair, if needed. What is going to be proposed is that they do the fiber testing, so that the broken fiber is identified as soon as possible.

7.) Update on call with Century Link

- Ed has been participating with Broadband Knights of the Round Table and Monica Coughlin, the E. D. person at the Governor's Office of Information Technology, mentioned about a month ago that Century Link had called them and inquired about SCAN and what SCAN does. So, a call was arranged with Century Link (which contained around 5 people from Century Link, the VP, and 3 unknown people) and to summarize the call Century Link is cautiously pessimistic about what SCAN is going to do to them. Vice-versa, SCAN is cautiously pessimistic about their participation with us. They did show concern about how hard it is going to compete with government funded projects, but SCAN's intent is not competing. They are skeptical to generate significant new

usage of communication usages and concerned about potentially losing customers.

- Sharing conduit brought up with Century Link and conditions would have to be fulfilled before they would be involved in shared conduit. They also mentioned several times the competition of government dollars and concept of overbuild. If there is fiber to Dove Creek, then that becomes a two-fold question:
 1. First, can we access it?
 2. Second, at a reasonable price?
 3. If reasonable, then we should not look at overbuilding existing fiber.
- They say want to work with us, but they wanted to charge \$2000/month, which is not a price point where it is competitive. The meeting was to partner with them and it was perceived that they only wanted information from SCAN and they are not committed. As a word of caution they might be setting up for a legal challenge and should be careful whenever SCAN is working with them.

8.) Eagle-Net follow-up

- There has been written exchanges from the COG to Randy Zila. They pointed out constraints for federal grant and they did not jump at the chance, nor shut down the opportunity. Paul did visit with them in Denver and they expressed that his effort was very valuable and reset the relationship in a positive way. There have been sending conflicting signals because they state they are still in initial stages with network designs/engineering, etc, but the very next day sign a contract with Longmont. This shows that their focus is still on the Front Range and that they are paying very close attention to the greater metropolitan area. The only way to attract their attention is to get to the bottom line. The two main ways to attract Eagle-Net is first show them anchor institutions that will help them connect them with other anchor institutions and second is e-rate contracts. Overall, it has been decided that SCAN will move ahead with or without Eagle-Net.

9.) Other –

A. Broadband Knights of the Roundtable – SCAN presentation?

- Ed is working on presentation for the group presented on video links. It has been strategized that Paul would go in person to the meeting to have these video links for them. It hasn't be scheduled yet and they do meet once a month, there is one on 11/9 and another one in December. This group is good sources of information for state decision makers recognize that there is more than one fiber provider.

B. Open Access Seminar

- The idea was for Fast Track and other vendors that were in the previous meetings to give information on open access network. The main point was to state that vendors do not have to give up control. There is elected officials meeting that is tentatively planned at the beginning of they year and the COG is planning to go over the legislatures. (Recommend to have timing would happen at the same time.)

- There was an affirmative response and a presentation on open access to the COG with SB 152. One issue is that SCAN may need to put a recommendation to have it. Who should be paid to do it? Mid-state? Region 9? The next step is to have a planning and this will be discussed on Friday at the SWCCOG meeting.

C. Old Business

➤ Hub equipment report – Usage Fee/Match

- There was a motion to adopt a usage approach to paying for hub equipment in Cortez and Durango. This puts the participated communities in a pro-rata basis and Paul would come up with an equation for a payment plan. The intent is to do a formula for the subscription fee; there won't be a charge in the absence of actual reliance on the hubs. There are two aggregation points: Durango and Cortez; the City of Cortez has already budgeted for their hub. The solution will be to find a way to equitably cover that cost and to shed light on the fact of utilizing those hubs.

➤ Business/Sustainability Plan development – Financial Analysis – Paul

- This sustainability plan will lay out the network and test the financial viability through a number of different variables. This is different from a business plan because this is a financial analysis it has nothing to do with marketing strategies, identifying potential customers, or dealing with legal ramifications it's intended to see the end result of those variables. Once SCAN retains a General Manager this will also be separate from this plan/development. This is still in draft form and pending.
- Some concerns following this plan are the lists provided of the potential customers with the same address identified twice. It was recently pointed out that almost half the addresses in Pagosa Springs were in there twice because of categorization.

• Statewide Internet Portal Authority (SIPA) – David Bygel

- David suggested that there be an interface between SCAN and SIPA portal; where the SCAN network and SIPA could be integrated as one. Perhaps this would avail SCAN with what SIPA has to offer. Regarding the Financial Analysis, it did indicate that there are questions out there with potential users. Though the main focus is just to provide bandwidth and that this bandwidth should be sustainable. Some ideas to help differentiate SCAN from another internet provider would be to use SIPA as potential partner by using their model of developing services, which would possibly gain these potential users as customers. In the August 2011 meeting, SIPA presented that they are bringing in a lot of revenue and looking for potential investments. SIPA was mentioned to be doing similar to aggregate customers on a service level. Ed mentioned that John Connolly

is director of SIPA and is also chairman of the board of Eagle-Net; he will do a follow up and try to contact them.

- **3rd party entity/sub-entity to services non-profit communities**
 - There was a suggestion to determine the need for this entity and if so it should be articulated. The main job right now is focus on the project at hand and to help solve the “gray area” regarding legal services. For this sub-entity/committee, the first step we be to identify the groups this project would like to serve; then to identify why we cannot serve them. Ed mentioned that this Telecom does report on this and this job could possibly be left up to the General Manager, as well.

10.) Agenda Items for COG meeting informational and action

- No comments/suggestions.

11.) Next Meeting of Committee

- Wednesday, November 30, 2011 from 3-4:30pm.

- Announcement/Proclamation
- Special Presentation
- Report

- Consent
- Decision

**AGENDA SUBMISSION FORM
Southwest Colorado Council of Governments**

Date of Board Meeting: 4 Nov 2011		<input type="checkbox"/>
Staff: Ed Morlan	Presentation Time: 5 minutes	<input type="checkbox"/>
Subject: Invoicing of Dark Fiber Lease	Discussion Time: 5 minutes	
Reviewed by Attorney? <input checked="" type="checkbox"/> Yes Attorney: Liberman <input type="checkbox"/> N/A <input type="checkbox"/> No fiscal impact		
Committee Approval <u>Telecom</u> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> N/A		

Background: The City of Durango will be contracting with private companies for dark fiber leases that involve the excess capacity of assets purchased with the DoLA grant funds and City of Durango/ La Plata County match funds. The companies currently leasing this fiber are Brainstorm and Cedar Networks. The attached Dark Fiber Contract will be between the City of Durango and the entity leasing the fiber. The City of Durango has asked that COG to perform the tasks of billing and payment collection, processing and disbursing the funds. The COG would essentially keep 75% of the revenue and remit 25% to the City, this is the same as that of the grant revenue; 75% COG – 25% City/County to purchase the assets. (There will need to be some “catch up” billing).

In discussing this with the attorney, he felt there should be some sort of IGA between the COG and the City reflecting this agreement and also including an attachment of simple policies and procedures pertaining to this (e.g. where to send the money, what if some one doesn't pay, etc.). The IGA should be ready by Nov. 1st and will be distributed to the COG Board.

Fiscal Impact: Each company leases 2 fibers for 2.25 miles. The city's price is \$60 per month per fiber plus a \$50 per month Network Access Fee. So each company would pay \$320 per month (2 fibers X 2.25 miles = \$270 + \$50 access fee = \$320). These two companies have been using the fibers since July, so there is \$3,840 due in 2011 and \$7,680 for 2012. Seventy-five (75%) is the COG's and 25% is the City's. **The 2011 revised budget and 2012 budget will reflect line items for sales and cost of sales to include this situation.**

Recommended Action: To approve the COG to do the quarterly billing and payment collection for the city of Durango's dark fiber lease agreement. The methods of payment offered will be by cash, check or ACH auto debit, with 75% of the collection staying with the COG and 25% being reimbursed to the City/County.

Additional action includes executing an Inter-Governmental Agreement documenting the terms of understanding for this relationship.

Accompanying Documents: Example Dark Fiber Lease Agreement template and a draft MOA between the SWCCOG and the City of Durango for invoicing and payment collection and disbursement.

**INTER-GOVERNMENTAL AGREEMENT
BETWEEN
SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS
AND
THE CITY OF DURANGO**

THIS AGREEMENT made and entered into this ____ day of _____, 2011, by and between the SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS (hereinafter referred to as “SWCCOG”), and the CITY OF DURANGO (hereinafter referred to as the “CITY”) concerning Dark Fiber Lease Agreements As To Excess Capacity, with regard to invoicing private parties, collection of payments, and disbursement of funds, who do hereby state and agrees as follows:

WITNESSETH:

WHEREAS, the SWCCOG is the recipient of a Colorado Division of Local Affairs (hereinafter referred to as “DOLA”) grant for telecommunication infrastructure improvements; and

WHEREAS, a portion of the DOLA grant for telecommunication infrastructure resulted in excess capacity that the CITY intends to lease to private parties; and

WHEREAS, it is appropriate and desirable to have SWCCOG assist the CITY in implementing the City’s Dark Fiber Lease Agreements As to Excess Capacity (hereinafter “EXCESS CAPACITY CONTRACTS”) with regard to invoicing private parties, collection of payments, and disbursement of funds; and

WHEREAS, it is desirable to describe in greater detail and to further specify invoicing, collection of payment, and disbursement of funds procedures between the SWCCOG and the CITY concerning EXCESS CAPACITY CONTRACTS.

NOW, THEREFORE in accordance with the above recitals, the SWCCOG and the CITY do hereby agree:

1. **Policies and Procedures**

The attached Policies and Procedures, Exhibit A, concerning invoicing, collection of payment, and disbursement of funds concerning EXCESS CAPACITY CONTRACTS shall be followed by the parties hereto.

2. **Termination Clause.**

This agreement may be terminated with or without cause by either party upon thirty (30) days written notice to the other party.

3. **Disbursal of Funds.**

The SWCCOG will remit 25% of the funds collected to the CITY, and SWCCOG will retain 75% of the funds collected.

4. **Indemnification.**

The CITY shall indemnify, save, hold harmless, and defend the SWCCOG and all its officials and employees from any and all liability, claims, demands, actions, and attorney fees arising out of, claimed

MEMORANDUM OF AGREEMENT

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on account of, or in any manner predicted upon loss or damage to the property of, injuries to, or death of all persons whatsoever or which may occur or be sustained in connection with performance or non-performance of this contract to the extent permitted by law.

5. It is understood and agreed that this Agreement does not establish a separate legal entity, nor does it make any party as an agent of any other party for any purpose whatsoever.
6. It is understood and agreed that each party's performance shall be subject to Appropriation of funds by governing body, and payment of such funds into the treasury of such party.
7. Each party shall, at all times, be responsible for its own costs incurred in the performance of this Agreement, and shall not receive any reimbursement from any other party, except for third party reimbursements.
8. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
9. Each and every term, provision, or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charters of the various parties, and the ordinances and regulations enacted pursuant thereto.
10. This Agreement shall be binding upon the successors and assigns of each of the parties hereto.
11. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the named parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the named parties that any person other than the named parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

MEMORANDUM OF AGREEMENT

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INTER-GOVERNMENTAL AGREEMENT BETWEEN THE CITY OF DURANGO AND THE
SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS

PAGE 2

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first
above written.

AGREED:

(SEAL)

CITY OF DURANGO

City Clerk

By: ?

(SEAL)

SOUTHWEST COLORADO COUNCIL OF
GOVERNMENTS

Secretary

By: Dr. Rick Smith, Chairperson

Exhibit A

Policies and Procedures for invoicing, payment collection and disbursement of funds concerning EXCESS CAPACITY CONTRACTS between the City of Durango and private companies

Pricing. The City of Durango (City), in consultation with the South West Colorado Council of Governments (SWCCOG), will determine the unit of sale and price. Presently it is \$60 per fiber per mile plus a \$50 per month network access fee.

Invoicing. The SWCCOG will send out an electronic invoice to the contact designated in the Dark Fiber Lease Agreement.

Acceptable Methods of Payment. Acceptable methods of payment are cash, check or Auto Debit (ACH)

Disbursement of AR payments. The funds will be disbursed within thirty days of receipt with 25% going to the City and 75% remaining with the SWCCOG.

Events of Default. If an account becomes over 60 days past due, the SWCCOG will notify the City and inform the customer that they are in danger of having their service shut off and charged a late fee of 21%. At 90 days delinquent, the service should be shut off after notification of such.

Remedies. The customer can pay all fees in arrears.

Periodic Review and Evaluation of processes. There should be a periodic review and evaluation, at least annual, of the policies and procedures for any needed changes.

g:\projects\regional governance\swccog\contracts\sigas\telecom\moa cog city of durango re invoicing and payments.doc

Southwest Colorado Council of Governments

Find Report

January through December 2015

SCAN Revenue vs Expenses 2015

Date	Name	Memo	Revenue	Expenses
01/05/2015	Cedar Networks	Dark Fiber Leasing 2015 1st Qtr	1,545.00	
01/05/2015	Fast Track Communications	Dark Fiber Leasing 2015 1st Qtr	870.00	
01/05/2015	BrainStorm	Dark Fiber Leasing 2015 1st Qtr	960.00	
01/05/2015	Town of Bayfield	Telecom Services 2015 1st Qtr	1,380.00	
01/05/2015	La Plata County	Telecom Services 2015 1st Qtr	300.00	
01/05/2015	Town of Mancos	Telecom services 2015 1st quarter	180.00	
01/09/2015	Mid-State Consultants	Invoice 1412-0084		700.00
01/13/2015	La Plata County	Reimbursement for e-tics 2015	2,100.00	
01/13/2015	City of Durango.	Reimbursement for e-tics 2015	2,100.00	
01/13/2015	City of Cortez.	Reimbursement for e-tics 2015	4,200.00	
01/15/2015	Fast Track	Service 01/01/2015 - 01/31/2015		1,100.00
01/30/2015	Fast Track	Service 02/01/2015 - 02/28/2015		700.00
02/11/2015	Mid-State Consultants	Invoice 1501-3043		700.00
02/18/2015	Town of Dolores	Telecom Services 1st Qtr 2015	180.00	
02/18/2015	City of Cortez.	Telecom Services 1st Qtr 2015	30.00	
02/24/2015	Mid-State Consultants	Invoice 1501-6238		700.00
03/01/2015	Fast Track	Service 03/01/2015 - 03/31/2015		900.00
03/17/2015	Nayarit	Broadband/SCAN		14.33
03/30/2015	Mid-State Consultants	Invoice 1502-3335		700.00
04/01/2015	Fast Track	Service 4/1/15-4/30/15		900.00
04/07/2015	Town of Bayfield	Telecom Services 2015 2nd Qtr	1,380.00	
04/07/2015	BrainStorm	Dark Fiber Leasing 2015 2nd Qtr	960.00	
04/07/2015	Cedar Networks	Dark Fiber Leasing 2015 2nd Qtr	1,545.00	
04/07/2015	City of Cortez.	Telecom Services 2015 2nd Qtr	30.00	
04/07/2015	Town of Dolores	Telecom Services 2015 2nd Qtr	180.00	
04/07/2015	Fast Track Communications	Dark Fiber Leasing 2015 2nd Qtr	870.00	
04/07/2015	La Plata County	Telecom Services 2015 2nd Qtr	300.00	
04/07/2015	Town of Mancos	Telecom Services 2015 2nd Qtr	180.00	
04/27/2015	Mid-State Consultants	Invoice 1503-3107		700.00
05/01/2015	Fast Track	Service 5/1/15 - 5/31/15		900.00
05/04/2015	Cedar Networks	Dark Fiber Leasing Q1 and Q2 billing correction	180.00	
05/04/2015	City of Durango	75% Dark Fiber Leasing Revenue Q1 & Q2 2015		5,197.50
05/21/2015	Mid-State Consultants	Invoice 1504-3282		700.00
06/02/2015	Fast Track	Service 6/1/2015-6/30/2015		900.00
07/01/2015	BrainStorm	Dark Fiber Leasing 3rd Qtr	960.00	
07/01/2015	Cedar Networks	Dark Fiber Leasing 3rd Qtr	1,635.00	
07/01/2015	Fast Track Communications	Dark Fiber Leasing 3rd Qtr	870.00	
07/01/2015	Town of Bayfield	Telecom Service 3rd Qtr	1,380.00	
07/01/2015	City of Cortez.	Telecom Service 3rd Qtr	30.00	
07/01/2015	Town of Dolores	Telecom Service 3rd Qtr	180.00	
07/01/2015	La Plata County	Telecom Service 3rd Qtr	300.00	
07/01/2015	Town of Mancos	Telecom Service 3rd Qtr	180.00	
07/01/2015	Skywerx	Dark Fiber Leasing 3rd Qtr	1,360.00	
07/02/2015	Fast Track	Service 7/1/2015-7/31/2015		900.00
07/02/2015	Mid-State Consultants	Invoice 1506-0214		700.00
07/13/2015	Fast Track Communications	Dark Fiber Leasing, Inv #2 for 3rd Qtr	840.00	
07/28/2015	Mid-State Consultants	Invoice 1507-0099		700.00
07/31/2015	Fast Track	Service 8/1/2015-8/31/2015		900.00
08/17/2015	Law Office of David Liberman, LLC	Invoice #3154		14.40

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08/31/2015	Mid-State Consultants	Invoice 1507-0099	700.00
08/31/2015	Fast Track	Service 9/1/2015-9/30/2015	900.00
09/08/2015	Law Office of David Liberman, LLC	Invoice #3159	14.40
09/13/2015	Miriam	Pay	174.87
09/17/2015	Fresh off the Press	7000 "senate bill" trifold brochures - Durango	531.00
09/24/2015	Mid-State Consultants	Invoice 1507-6145	700.00
09/30/2015	Fast Track	Service 10/1/2015-10/31/2015	900.00
10/01/2015	BrainStorm	2015 4th Qtr Dark Fiber Leasing	960.00
10/01/2015	Cedar Networks	2015 4th Qtr Dark Fiber Leasing	1,635.00
10/01/2015	Fast Track Communications	2015 4th Qtr Dark Fiber Leasing	1,185.00
10/01/2015	Skywerx	2015 4th QtrDark Fiber Leasing	1,020.00
10/01/2015	Town of Bayfield	2015 4th Qtr Telecom Services	1,380.00
10/01/2015	City of Cortez.	2015 4th Qtr Telecom Services	30.00
10/01/2015	Town of Dolores	2015 4th Qtr Telecom Services	180.00
10/01/2015	La Plata County	2015 4th Qtr Telecom Services	300.00
10/01/2015	Town of Mancos	2015 4th Qtr Telecom Services	180.00
10/01/2015	Miriam	Pay	226.68
10/12/2015	Fresh off the Press	400 "SB152 - Silverton" trifold brochures	369.00
10/15/2015	Miriam	Pay	361.32
10/19/2015	Law Office of David Liberman, LLC	Invoice #3174	28.80
10/21/2015	Mid-State Consultants	Invoice 1509-3083	700.00
10/25/2015	Miriam	Pay	130.35
10/30/2015	Fast Track	Service 11/1/2015-11/30/2015	900.00
11/03/2015	Lisa Schwantes	SB 152 brochures/electronic flyers for AC, SJC, Silverton	362.50
11/08/2015	Miriam	Pay	147.85
11/25/2015	Mid-State Consultants	Invoice 1511-064	700.00
12/02/2015	Fast Track	Service 12/1/2015 - 12/31/2015	900.00
12/23/2015	Mid-State Consultants	Invoice 1512-0124	700.00
12/31/2015	City of Durango	Dark Fiber Leasing 2015 Q3 & Q4 (75% City, 25% COG)	7,848.75
12/31/2015	Cedar Networks	To reverse out credit memo 104792 placed 12/30/2014	120.00
1/1/2015-12/31/2015	Salary and Wages	Total hours for Miriam and Sara 2015	8,236.64
			<u>34,075.00</u>
			<u>43,678.39</u>

Profit vs Loss

-9,603.39

Menu of Possible Services via SCAN

- Shared IT Staff/Desktop Support
- Shared Software
 - o Financial
 - o HR
 - o GIS
 - o Asset Management Software
- Shared Computer and Software Training
- Voice over Internet Protocol (VOIP) phones
- Aggregation of Broadband Connectivity
 - o Increased network will help decrease cost for COG members
- Video Arraignments
- Cloud based services
 - o Virtual Machines
 - o Remote Storage/Backup
- Broadband Asset Management

Please note, most of this list has been discussed since the beginning of the SCAN project, but never funded or implemented. Cost savings will depend on each community current expenditures and SCAN revenue. None of these are possible with 25% COG, 75% Member revenue share.

25% Member, 75% COG Dark Fiber Revenue Share

Community	# of Fiber Strands	Miles	\$60/Strand Current Contracts	\$50/mo. Network Access Fee	Annual	Community Annual Revenue	COG Annual Revenue
Brainstorm	2	2.25	\$ 270.00	\$ 50.00	\$ 3,840.00	\$ 960.00	\$ 2,880.00
CEDAR	4	1	\$ 240.00	\$ 50.00	\$ 6,540.00	\$ 1,635.00	\$ 4,905.00
	2	1	\$ 120.00				
	1	2.25	\$ 135.00		\$ 6,396.00	\$ 1,599.00	\$ 4,797.00
FastTrack	4	1	\$ 240.00	\$ 50.00			
	2	1.15	\$ 138.00				
	1	1.75	\$ 105.00				
Skywerx	4	1	\$ 240.00	\$ 50.00	\$ 3,480.00	\$ 870.00	\$ 2,610.00
					\$ 20,256.00	\$ 5,064.00	\$ 15,192.00

Community	# of Fiber Strands	Miles	\$110/Strand New Contracts	\$50/mo. Network Access Fee	Annual	Community Annual Revenue	COG Annual Revenue
Archuleta County/Pagosa Springs	2	1	\$ 110.00	\$ 50.00	\$ 3,240.00	\$ 810.00	\$ 2,430.00
Bayfield	2	1	\$ 110.00	\$ 50.00	\$ 3,240.00	\$ 810.00	\$ 2,430.00
Cortez	4	2	\$ 110.00	\$ 50.00	\$ 11,160.00	\$ 2,790.00	\$ 8,370.00
Dolores County	2	1	\$ 110.00	\$ 50.00	\$ 3,240.00	\$ 810.00	\$ 2,430.00
Durango - New Contracts	4	2	\$ 110.00	\$ 50.00	\$ 11,160.00	\$ 2,790.00	\$ 8,370.00
Ignacio	2	1	\$ 110.00	\$ 50.00	\$ 3,240.00	\$ 810.00	\$ 2,430.00
La Plata County	2	1	\$ 110.00	\$ 50.00	\$ 3,240.00	\$ 810.00	\$ 2,430.00
Mancos	2	1	\$ 110.00	\$ 50.00	\$ 3,240.00	\$ 810.00	\$ 2,430.00
San Juan County/Silverton	2	1	\$ 110.00	\$ 50.00	\$ 3,240.00	\$ 810.00	\$ 2,430.00
							\$ 33,750.00

Community Revenues

Archuleta County/Pagosa Springs	\$ 810.00
Bayfield	\$ 810.00
Cortez	\$ 2,790.00
City of Durango	\$ 7,854.00
Dolores County	\$ 810.00
Ignacio	\$ 810.00
La Plata County	\$ 810.00
Mancos	\$ 810.00
San Juan County/Silverton	\$ 810.00
COG	\$ 48,942.00

**MEMORANDUM OF AGREEMENT
BETWEEN**

**SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS
AND _____ (A LOCAL GOVERNMENT) AS EXCLUSIVE AGENT FOR ITS LEASING
OF ITS DARK FIBER LINKS ,INVOICING OF PRIVATE PARTIES, COLLECTION OF
PAYMENTS AND DISBURSEMENT OF FUNDS**

THIS AGREEMENT made and entered into this ____ day of _____, 2016, by and between the SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS (hereinafter referred to as “SWCCOG”), whose address is PO Box 963, Durango, CO 81302, and its member local government, the _____ (hereinafter referred to as the “LOCAL GOVERNMENT”), whose address is _____, concerning Dark Fiber Lease Agreements, with regard to being the exclusive agent for LOCAL GOVERNMENT with respect to leasing of Dark Fiber Links, invoicing private parties, collection of payments, and disbursement of funds, who do hereby state and agrees as follows:

PREMISES:

The SWCCOG recognized a need to improve telecommunication capabilities, capacity, reliability, and availability in the five county region in order to affect economic development, improve community anchor institutions efficiency and accessibility, and reduce telecommunication costs for community anchor institutions; and

The SWCCOG was the recipient of a Colorado Division of Local Affairs (hereinafter referred to as “DOLA”) grant for telecommunication infrastructure improvements; and

The SWCCOG initiated and recently completed the Southwest Colorado Access Network (SCAN) project to provide telecommunication connection in participating communities to a regional network through a variety of economically viable and sustainable models; and

The LOCAL GOVERNMENT is a SWCCOG member and received DOLA grant funds to help build its SCAN infrastructure; and

The LOCAL GOVERNMENT wishes to have SWCOGG assist the LOCAL GOVERNMENT in implementing the LOCAL GOVERNMENT’s Dark Fiber Link Lease Agreements (“DFL’s”) by serving as its exclusive agent with respect to leasing SCAN Dark Fiber Links to Internet Service Providers (“ISP’s”), invoicing ISP’s, , collection of payments from ISP’s, and disbursement of a percentage of those funds to the LOCAL GOVERNMENT; and

The LOCAL GOVERNMENT understands that SWCCOG intends to perform these same services for other members with respect to their SCAN assets.

It is desirable to describe in greater detail and to further specify leasing, invoicing, collection of payment, and disbursement of funds procedures between the SWCCOG and the LOCAL GOVERNMENT concerning DFL’s.

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

1. Policy.
The attached policy, Exhibit A, concerning leasing, invoicing, collection of payment, and disbursement of funds concerning DFL's are agreed to and shall be followed by the parties hereto. Under no circumstance is the SWCCOG required to incur cost or legal fees in pursuit of or collection of delinquent accounts.
2. Subject Contracts.
The form that the SWCCOG will use with respect to the Local Government's DFL's that are the subject of this MOU are approved by the parties and attached hereto as Exhibit B. During the term of this MOU and any renewal of this MOU, the LOCAL GOVERNMENT appoints the SWCCOG, acting by and through its Executive Director, as its exclusive agent to enter into, and execute the DFL's on behalf of and binding the Local Government.
3. Effective Date, Term and Termination.
This agreement shall become effective upon the date of the last signature by the authorized representative of both parties. Subject to annual appropriations, this MOU shall automatically renew unless either party opts out of the renewal at least 30 days prior to the anniversary date of this agreement. Additionally, either party may terminate this memorandum of understanding at any time by providing the other party written notice 90 days prior to termination, with or without cause. .
4. Payment and Disbursal of Funds
The SWCCOG will disburse 25% of the gross funds received from the private parties (gross revenues) to the LOCAL GOVERNMENT, and the SWCCOG will retain 75% of the gross funds collected (gross revenues) as its payment for services provided hereunder. Payment by the SWCCOG to the LOCAL GOVERNMENT shall be yearly and in arrears of the receipt of funds.
5. Indemnification
The LOCAL GOVERNMENT shall indemnify, save, hold harmless, and defend the SWCCOG and all its officials and employees from any and all liability, claims, demands, actions, and attorney fees arising out of, claimed on account of, or in any manner predicted upon loss or damage to the property of, injuries to, or death of all persons whatsoever or which may occur or be sustained in connection with performance or non- performance of this contract to the extent permitted by law. Notwithstanding, each party is responsible for any damage caused as a result of the acts or omissions of that party's employees, agents, or representatives.
6. Governmental Immunity
The party's hereto do not waive their governmental immunity.
7. Breach
Any failure of either party to perform in accordance with the terms of this agreement shall constitute a breach. Failure to cure the breach within thirty business days after written notice to the address contained herein shall be grounds for the non-breaching party to terminate this agreement and exercise all legal remedies available. All obligations to pay damage or loss, and to indemnify shall survive termination. Any dispute concerning the

performance or interpretation of the MOU which cannot be resolved by the designated points of contact or their immediate superiors shall be referred to the party's chief administrative officer (Town/City/County Manager or SWCCOG Executive Director). If the matter is not resolved within 45 days after referral, either party may file legal action. Any litigation will be filed in District Court of La Plata County or if federal law applies, in the applicable Colorado Federal District Court.

8. No Special Damages.

Notwithstanding any other provision hereof, neither party shall be liable for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing, replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of its performance or failure to perform under this Agreement.

9. It is understood and agreed that this Agreement does not establish a separate legal entity, nor does it make any party as an agent of any other party for any purpose whatsoever, except as specifically stated herein. The LOCAL GOVERNMENT shall be responsible for all installation, maintenance and operation costs related to its own dark fiber equipment, property, and infrastructure. SWCCOG is not responsible for maintenance of the LOCAL GOVERNMENTS dark fiber or associated equipment nor is it liable for damage of any kind occurring to LOCAL GOVERNMENT property, unless such damage is caused by SWCCOG negligence or intentional misconduct.

10. Annual Appropriation

It is understood and agreed that each party's performance shall be subject to appropriation of funds by governing body, and payment of such funds into the treasury of such party.

11. Costs of Performance.

Each party shall, at all times, and subject to annual appropriation, be responsible for its own costs incurred in the performance of this Agreement, and shall not receive any reimbursement from any other party, except for third party reimbursements.

12. Severability

It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

13. Construction

Each and every term, provision, or condition herein is subject to and shall be construed in accordance with the provisions of Colorado law, the Charters of the various parties, and the ordinances and regulations enacted pursuant thereto.

14. Assignment

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

15. Third party beneficiaries

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the named parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the named parties that any person other than the named parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16. Authority

Local Government represents to SWCCOG that it has all right and authority to enter into this agreement, and to enter into the attached form of DFL with ISPs, and that its dark fibers links are available for lease (other than those identified above by the Local Government as excluded from lease below).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first above written.

AGREED:

LOCAL GOVERNMENT

Name, Title

Date

SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS

Miriam Gillow-Wiles, Executive Director

Date

EXHIBIT A

- Local Government shall be responsible for:
 - Installation, maintenance, and operation costs related to its own SCAN equipment and dark fiber.
 - The following dark fiber links are excluded from lease: _____

- The SWCCOG shall be responsible for:
 - Quarterly billing in advance of usage to ISP
 - Yearly remittance to Local Government in arrears
 - Executing and managing DFL's on behalf of Local Government
 - Provide Local Government with copy of executed DFL's.
 - Maintain SCAN infrastructure data, including maps

- Lease rate of Dark Fiber Links shall be \$XXX.00/mile per month, two strand minimum, rounded up to the nearest whole number with respect to miles. This amount may change by mutual agreement of SWCCOG and Local Government.

Local Government agrees to conduct all negotiations for the DFL's only through SWCCOG, and to refer to SWCCOG all communications received in any form from ISP's with respect to prospective leasing, during the term, and any renewal, of this MOU.

EXHIBIT B

“Customer 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 Customer.

“Demarcation Point” shall refer to the point of connection between the connector at the end of the Local Government’s Network and the mating connector of the Customer’s network. If the mating connector of the Customer’s Network is located in a utility pedestal in the public right of way, the Demarcation Point is defined as the dark fiber splice or cross-connect enclosure located in a Local Government manhole.

“Dark Fiber Link” (DFL) is a dedicated fiber(s) creating a communications pathway between two Demarcations via the Local Government’s optical fiber and Network facilities. The following described fibers are dedicated pursuant to the terms of this lease for the benefit of Customer

“Service Order” A SWCCOG document on behalf of the Local Government filled out by the Customer describing the number of Dark Fiber Links desired between identified demarcations.

“Local Government Network” shall refer to the linked communications system created by the installation of the SCAN fiber optic cables, other cables, and wired devices owned by the Local Government.

2. SERVICES

(A) In consideration for the payments to be made by the Customer, pursuant to the terms of each Service Order and this Lease, the Local Government, subject to availability, agrees to provide the Customer use of one or more of the Local Government’s DFL(s) from one location to another, as more specifically described in a Service Order prepared by the Customer. There is a 2 DFL minimum.

(B) The Local Government shall install and maintain all portions of the Local Government’s Network up to the Demarcation Point. The Local Government, through SWCCOG, will use reasonable efforts to give the Customer notice at least ten (10) business days prior to the date of any scheduled, non-emergency work on the Local Government’s Network that may affect the Customer’s DFL.

(C) The Local Government shall contract with a third party vendor for services to extend the requested number of DFL’s to the Customer’s location. The Customer shall install conduit from the Local Government’s pullbox to the Customer’s pullbox and provide the Local Government with ingress and egress to the Customer pullbox and equipment from the public right of way to the Customer’s pullbox. Customer shall also obtain any necessary right-of-way permit(s) from the Local Government for any work in Local Government right-of-way. The Customer shall be responsible for all costs associated with any building modifications, conduit, fiber, pullboxes, equipment, and labor for installation in and outside of the Local Government right of way to extend DFL’s to the Customer’s Network by third party vendor. If requested by the Local Government, the Customer shall provide access to the Local Government or its designate to allow inspection of the Customer’s connection frame and attached equipment, to insure its compatibility with the Local Government Network and to verify usage of Local Government Network resources. The Customer shall obtain all necessary approvals, including right-of-way permits and easements where applicable from property owners which will allow the Local Government to locate, install and maintain its equipment, including emergencies; and to remove its equipment,

EXHIBIT B

cable and wire in the event of the Customer's default of any of the provisions of this Lease or at the termination of this Lease. The Local Government retains the right to leave in place and continue use of any of its equipment, cable and wire beyond termination, until the Local Government decides to remove part or all of its equipment, cable and wire. Customer will provide as-built plans to the Local Government and with a copy to the SWCCOG in PDF and GIS file formats on any work or changes that are done to the existing system (splices, hand holds, pullboxes, etc.)

(D) Any unscheduled outage affecting the DFL's may require the Local Government to dispatch a third party vendor to perform emergency repairs. The Customer agrees to report outages to any of the Primary Contacts by telephone or email as soon as reasonably possible. The Local Government will use reasonable efforts to have its third party vendor at the site requiring an emergency repair within four (4) hours after the fault is identified and dispatch is deemed necessary. The Local Government will attempt to restore the service no later than six (6) hours after the fault is identified. The Local Government retains the right to charge the Customer for time and materials expended, if the outage is through no fault of the Local Government or is attributable to the Customer.

3. SERVICE LEVEL

(A) Terms and Conditions

1. Dark Fiber Links (DFLs) are single fiber paths from one point to another and have no automatic failover or redundancy. Since DFLs do not include the Local Government provided electronic equipment, these links are not monitored or Network-managed by the Local Government. Therefore, the service level for DFL service is limited to the parameters described below. If the Local Government fails to meet any of the service levels defined in this section, the Customer's sole remedies are to allow the Local Government to use commercially reasonable efforts to address the deficiencies or for the Customer to terminate the Lease in accordance with Section 7(B) and for the SWCCOG on behalf of the Local Government to credit the Customer's account, as appropriate, based on service level guarantee detailed below. The target available time for the DFLs is equal to 99.99% of the time in a calendar year. No other remedies or damages, including, but not limited to, consequential damages, are available to Customer.

2. Interruptions and Service Credits

If the Customer's DFL service is interrupted, other than the defined Exclusions, the Customer will be granted a service credit. This service credit will be the Customer's sole and exclusive remedy in the case of a service interruption and will be calculated as 1/760th of the monthly rate for the affected service for each hour that the interruption continues.

3. Exclusions

The service level credits do not apply for failures (i) occurring during scheduled maintenance or configuration events; (ii) attributable to any application, equipment, system, act or omission of the Customer, the Customer's employees, contractors, agents or end users; (iii) caused by Force Majeure or other causes beyond the reasonable control of the Local Government; (iv) in which testing or repairs are delayed due to insufficient access to equipment in the Customer's premises; or (v) of four (4) hours or less in duration.

3. Notification

In case of a service level failure, the Customer must first make sure the problem is not with the Customer's Network or Equipment., The Customer then should notify the Local Government and SWCCOG through the Primary Contacts in Section 1B. A trouble ticket

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will be issued to verify and address the issue. The Local Government reserves the right to charge reasonable fees for false alarms.

4. Request for Credit

The Customer must submit requests for credit within thirty (30) days after the service failure event. The request must include the Customer's account number, service address, contact information, description and date of the incident, Local Government trouble ticket number, amount of credit requested, and the Customer's calculations. The total of all service level credits shall not exceed the monthly rate for the portion of the Customer's service affected. Mail the request to: Local Government of _____, PO Box _____, _____, CO _____, with a copy to the SWCCOG. If approved by the SWCCOG on behalf of the Local Government, the credit should be applied to the Customer's account within two billing cycles.

6. Mean Time to Repair (MTR)

MTR is a monthly measure. The Local Government standard is four (4) hours or less. MTR is defined as (total outages minutes) / (number of outages). No credits are associated with MTR.

7. 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 dB (decibel) limit specified on the Service Order. If the signal loss of the Customer's DFL service exceeds this limit for any reason other than a service interruption or one of the exclusions above for a period in excess of 48 hours, the Customer may be granted a service credit. This service credit will be the Customer's sole and exclusive remedy in the case of excessive signal loss, and will be calculated as 20% of the monthly rate for the portion of service affected.

4. THE LOCAL GOVERNMENT'S EQUIPMENT

(A) Equipment provided by the Local Government for the DFL is owned by the Local Government and is to be returned to the Local Government upon termination of the Service.

(B) The Customer agrees to keep the Local Government equipment in good repair for the duration of the Lease. Except as may be modified in the Service Order, the Customer grants to the Local Government and its agents six (6) rack units, or equivalent wall or shelf space at each Demarcation Point, electricity if required, and access to operate and service Local Government equipment.

(C) The Customer shall protect the Local Government premises and equipment and is responsible for any damage to or loss of the Local Government's premises or equipment.

(D) The Customer agrees to return the Local Government equipment within seven (7) days after termination of the Service, and to immediately pay the fair market value for any part of the equipment not returned to the Local Government within the seven (7) day period. Fair market value will be reasonably determined at the Local Government's sole discretion.

5. CUSTOMER USE OF DFL

The Customer may not use the DFL to provide communication services to other telecommunications providers or government agencies, except as specifically authorized in the Service Order. The location and specifications of a DFL are defined in the Service Order.

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Use shall be in accordance with all federal, state, and local laws.

6. PAYMENT

(A) In consideration for the Service to be provided by the Local Government and the cost for connection or disconnection, the Customer shall pay fees to the SWCCOG. Payment will be made in advance and in accordance with the Service Order, or in the absence of a Service Order, pursuant to the SWCCOG and Local Government's applicable fee schedule or price list. The SWCCOG and Local Government reserves the right to change pricing at any time, except that the Customer's pricing is protected within the current Term of the Lease. The Customer shall also pay appropriate late payment fees in accordance with the credit and collection policies of the Local Government and any sales tax or any taxes or other fees required by applicable law.

(B) Payment shall be due in accordance with the Customer's Service Order. Two payment options are available:

- i.** A quarterly paper or electronic invoice for a payment by check.
- ii.** Automatic bank draft using the SWCCOG's ACH service. The service authorizes the SWCCOG to make automatic quarterly charges each calendar quarter against your bank account. This authorization shall be cancelable by the Customer's via written notice to SWCCOG, delivered either by email, fax or USPS (First Class, postage prepaid).

(C) The Local Government has entered into an agreement with the Southwest Colorado Council of Governments as its billing agent to perform billing and collections on behalf of Local Government. The address for the Southwest Colorado Council of Governments is PO Box 963, Durango, CO 81302

7. TERM OF LEASE

(A) The initial Term of this Lease is twelve (12) months. At the end of the initial Term, the Lease will continue on an annual basis until terminated with at least 30 days written notice by either party or renewed by written agreement of the SWCCOG and Customer..

(B) If the SWCCOG/Local Government materially defaults in performance of any duty or obligation imposed by this Lease, the Customer may terminate this Agreement after giving written notice to the SWCCOG and Local Government specifying the existence and nature of the default, and giving the SWCCOG and Local Government thirty (30) days from the effective date of the notice to cure the default. Events of material default by the Local Government shall include, but are not limited to, failure to perform its duties hereunder three or more times within any calendar month. If the Customer terminates this Lease in accordance with this paragraph after the SWCCOG/Local Government fails to cure the fault within 30 days after notice, then the Customer will not be obligated to pay any monthly Service charges, beyond the month in which the Customer terminates.

(C) The SWCCOG or Local Government may suspend or terminate the Lease upon no less than thirty (30) days prior notice, and under this section shall not release the Customer from monthly payments or other obligations for the remainder of the Term of Lease, upon (i) the Customer's failure to pay any amounts invoiced hereunder within thirty (30) days after the date of the invoice; or (ii) the Customer's failure or refusal to cure any breach of this Lease (other than as mentioned above) within thirty (30) days after notice of such breach has been given by the SWCCOG to the Customer.

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(D) Except as provided for in section 7(B), if the Lease is terminated by any party prior to the completion of the full Term of Lease, the Customer agrees to pay the SWCCOG, within seven (7) days, all of the balance on the Customer's account, the fair market value of any equipment not returned (if applicable), and 70% of the monthly charges for the balance of the Term of Lease.

(E) The parties acknowledge that the SWCCOG or Local Government may cancel this agreement, in its discretion, if it receives a written complaint pursuant to C.R.S. § 29-27-303.

8. DISCLAIMER OF WARRANTIES

The Local Government and SWCCOG exercise no control whatsoever over the content, accuracy or quality of the information passing through its Network or any products ordered by the Customer via its Network. The information or products obtained by the Customer through the Service are provided "as is" without any warranties whatsoever, expressed or implied. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SWCCOG and LOCAL GOVERNMENT MAKES NO WARRANTIES REGARDING THE NETWORK, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT ITS NETWORK OR DARK FIBER WILL OPERATE ERROR FREE OR WITHOUT INTERRUPTION.

9. LIMITATION OF LIABILITY

In no event shall any party hereto be liable to any 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 the Customer resulting from loss of data due to delays, non-deliveries, mis-deliveries or interruptions in Service, regardless of the cause.

10. LIMITATION OF LIABILITY/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 you resulting from loss of data due to delays, non-deliveries, mis-deliveries or interruptions in Service, regardless of the cause.

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

Customer shall indemnify, defend and hold harmless the SWCCOG 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 Customer, its agents, officers, directors, employees or contractors; the exercise by Customer of the privileges or rights given herein; and the performance by Customer of any of its obligations under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by the SWCCOG 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. Customer shall pay any cost that may be incurred by Local Government and/ or SWCCOG in enforcing this indemnity, including reasonable attorney fees. Customer shall indemnify, defend, and hold harmless the Local Government and/or SWCCOG from and against any loss, cost, expense or liability arising out of a claim that Customer's use of its own equipment, software, and the like used by Customer in connection with the Local Government's network or dark fiber, infringes, misappropriates or otherwise violates the intellectual property rights of any third party.

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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 SWCCOG shall be personally responsible for any liability arising under this Agreement.

11. FORCE MAJEURE

Neither party shall be considered in default of its obligations hereunder if performance of such obligations is prevented or delayed by acts of God, government, war, riots, acts of civil disorder, labor disputes, failure or delay of transportation or such other causes as are beyond such party's reasonable control.

12. 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.

13. GOVERNING LAW

This Lease shall be construed under the laws of Colorado, and as applicable, of the United States of America. Venue for any action or proceeding arising out of this Lease shall be in La Plata County, Colorado.

14. PRIVATE CARRIER SERVICE

Entering into this Agreement and providing the Service do not classify the Local Government or the SWCCOG 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.

15. APPROVAL & SIGNATURE PAGE

By signing below, representatives from the Local Government and the Customer acknowledge their approval of the terms of this document.

SWCCOG Executive director on behalf of the Local Government of _____

Signature: _____ Date: _____

Customer: _____

Name: _____

Title: _____

Signature: _____ Date: _____

EXHIBIT B