

Montezuma County Contract

To: SWCCOG Board of Directors
From: Miriam Gillow-Wiles
Date: 10 March 2021

Comment s: Attached is a contract between Montezuma County and the Southwest Colorado Council of Governments. This contract supports the development of fiber between Cortez and Towaoc and utilizes the County's appropriated funding for fiber development as match to the SWCCOG's DOLA grant for NEPA work along US160/491 from Cortez south to roughly the Ute Mountain Ute Reservation line.

In August the SWCCOG applied for funding from DOLA REDI for \$86,000 to do NEPA and other environmental and social impact reviews to be prepared to develop fiber between Cortez and Towaoc. For the DOLA match, the SWCCOG had discussed using Ute Mountain Ute Tribe funding that was expected to be spent in conjunction with the EDA grant for \$6.8 Million. The grant did not fit within the EDA's parameters, the EDA did not fund that grant. As a result, the SWCCOG needed another match for the grant.

Late in 2020 Love's Truck Stop announced it was planning on redeveloping property south of Cortez, at the intersection of US160/491 and County Road G (in the Cortez Airport vicinity, please see map). Due to this announcement, the City of Cortez and Montezuma County wanted/needed to build fiber to this new truck stop. Both the City and County approved an expenditure of \$300,000 to install roughly five miles of fiber in the CDOT ROW. However, the development cannot be done without an environmental review as required by CDOT.

Since the SWCCOG was funded to do the environmental review, it seemed natural to partner on this project. SWCCOG staff has been working with Montezuma County and City of Cortez staff to make the fiber development happen. With support from Montezuma County staff, we were able to put together an agreement where the SWCCOG will utilize the County's funding as match, and the COG will provide the appropriate reviews.

I was able to attend a Montezuma BOCC meeting on Tuesday, March 9th where they were discussing the agreement. The County's attorney had some minor questions about the language in the agreement and how that might have made the County privy to the COG-DOLA agreement. As the changes do not modify the intent of the agreement, I thought they were acceptable. The County approved the contract and signed it that day. Below you will see the minor changes highlighted.

For reference Exhibit A is the SWCCOG-DOLA Contract.

Montezuma County Contract

Original (provided by SWCCOG attorney)

WHEREAS, Exhibit "A", provides that SWCCOG has been awarded funding and will fulfill the aspects of the Project per the Exhibit in coordination with The County, who is the lead agency for the Project;

WHEREAS, by this Agreement, the SWCCOG and The County intend for the SWCCOG to (1) complete the preconstruction work for the Project reflected in Exhibit "A" and (2) to utilize the County's previously approved \$300,000 funding as Match for the awarded funding Exhibit "A".

Montezuma County Version

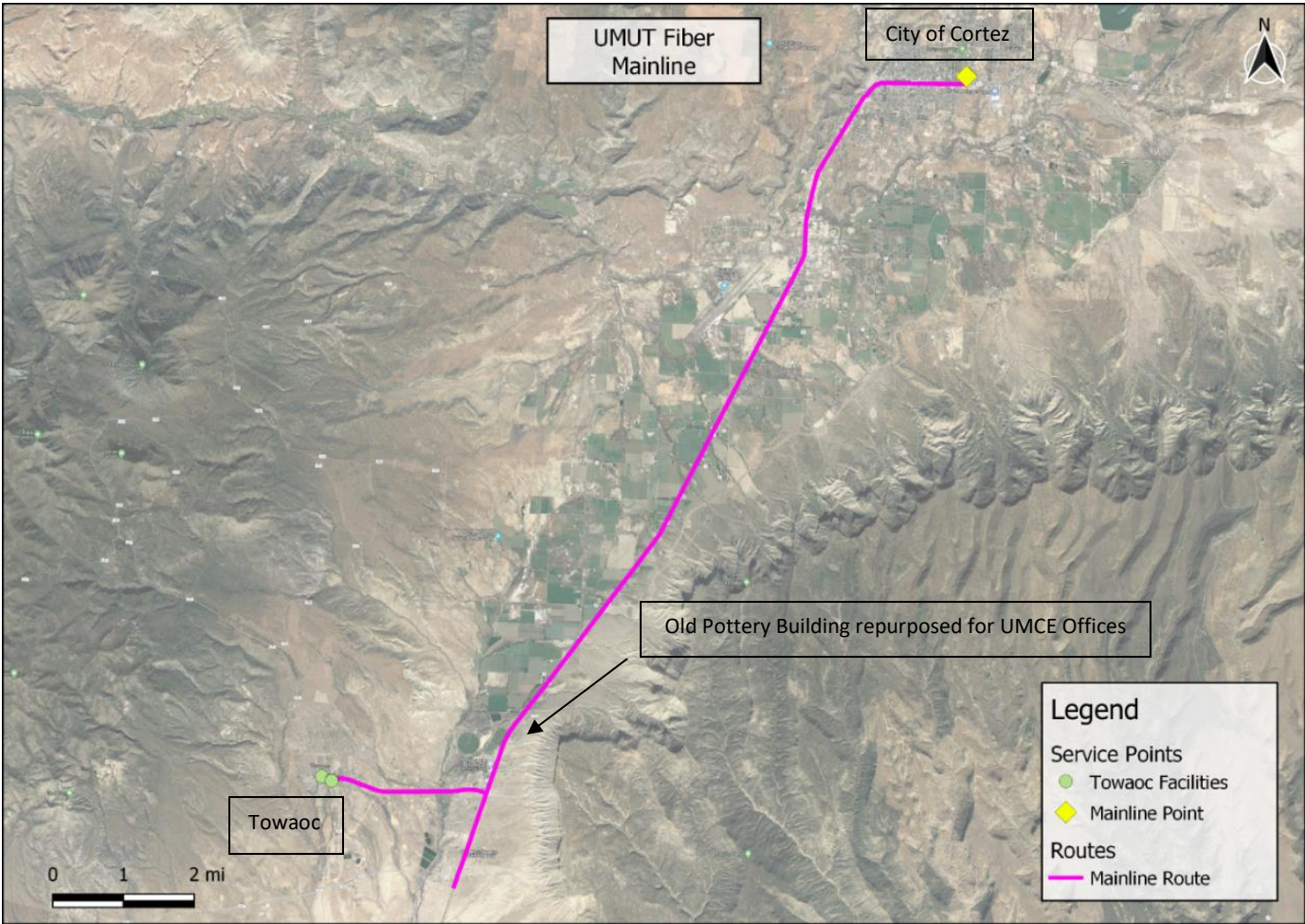
WHEREAS, SWCCOG has been awarded funding and will fulfill the aspects of the Project and coordinate with The County, who is the lead agency for the Project;

WHEREAS, by this Agreement, the SWCCOG and The County intend for the SWCCOG to (1) complete the preconstruction work for the Project and (2) to utilize the County's previously approved \$300,000 funding as Match for the awarded funding.

Maps/Location Orientation



Montezuma County Contract



Legal Review: Used existing template provided by Legal, with minor modifications by Montezuma County

Fiscal Impact: Expends an existing grant.

Staff Recommendation: Approve contact with Montezuma County.

**MEMORANDUM OF AGREEMENT
BETWEEN
SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS AND
MONTEZUMA COUNTY REGARDING
GRANT CONTRACT FOR CAPITAL EXPENDITURE**

THIS MEMORANDUM OF AGREEMENT (the "Agreement") is entered into this _____ day of _____, 2021, by and between the SOUTHWEST COLORADO COUNCIL OF GOVERNMENTS, (hereinafter referred to as the "SWCCOG") whose address is 295 Girard Street, Ste B, Durango, CO 81303, and MONTEZUMA COUNTY, whose address is 109 West Main Street, Cortez, 81321 (hereinafter referred to as the "The County") (collectively, the "Parties").

RECITALS

WHEREAS, in conjunction with the Fiber to South Cortez Project (hereinafter referred to as the "Project"), the SWCCOG has previously submitted a grant application will execute a Department of Local Affairs (Agency) Energy and Mineral Impact Assistance grant (Referred to as Exhibit "A") in the amount of \$ 86,000 (the "Grant") with \$ 300,000 funds for match, previously designated by The County for the Fiber to South Cortez Project for engineering, construction, fiber, and other project costs; and

WHEREAS, SWCCOG has been awarded funding and will fulfill the aspects of the Project and coordinate with the The County, who is the lead agency for the Project;

WHEREAS, it is both necessary and desirable for the SWCCOG to enter into this Agreement with The County for purposes of setting forth the relative responsibilities of the parties with respect to the Project, and the expenditure of the funds in conjunction therewith; and

WHEREAS, by this Agreement, the SWCCOG and The County intend for the SWCCOG to (1) complete the preconstruction work for the Project and (2) to utilize the County's previously approved \$300,000 funding as Match for the awarded funding.

WHEREAS, it is the mutual desire of the parties to set forth their understanding and agreement, in writing, with respect to said obligations:

NOW, THEREFORE, the Parties hereby mutually agree as follows:

1. Role of the Parties. It is the intent of this Agreement to ensure that all contractual obligations concerning the project and grant will be accomplished by the SWCCOG, and that The County will provide all match funds in the form of funding already approved for the Project. The SWCCOG will perform the role of fiscal agent for the grant including assigning a responsible administrator for grant administration purposes if necessary.

2. Responsibilities Pursuant. to the terms of the grant contract, the SWCCOG shall be the fiscal agent in administering the funding contract and shall receive from AGENCY all portions of the funds designated for the project. The SWCCOG shall submit all necessary grant documents to Agency as required by the Grant Contract. The County agrees that it will at any time and from time to time do, provide copies of documents and expenses related to The Project in a timely manner in order for the SWCCOG to fully carry out its obligations in accordance with the funding contract.

3. SWCCOG Responsibilities:

- a. See Attachment B: Scope of Work

4. Montezuma County Responsibilities:

- a. The County agrees to provide expenditure reports including proof of expenses and monthly activity reports, as related to the Project.
- b. The County agrees that it shall designate a single individual to serve as a project representative, who shall have the responsibility to coordinate with the SWCCOG on project implementation. The County shall promptly advise SWCCOG of any changes in project representative.
- c. The County agrees to provide the SWCCOG 144 count fiber optic lines upon completion of the Project.

5. Financial Management. The SWCCOG will adhere to the applicable financial management rules and policies of the funding contract and the Agency throughout the term of the project. The SWCCOG shall require documentation evidencing allowable and appropriate expenses on the project, with copies of checks, invoices, purchase orders, and proof of payment of bills by The County. After review, the SWCCOG shall forward the request to Agency for payment.

6. Budget. The SWCCOG will adhere to the budget in Exhibit A and will execute the Project in a timely fashion and in adherence to Agency reimbursement requests requirements.

7. Matching Funds. The County will use existing funding to provide matching funds for the Project and will provide documentation per Paragraph 4 above.

8. Term of Agreement. Unless sooner terminated as provided herein, this Agreement shall remain in full force and effect until such time as the SWCCOG fulfills the obligations under the grant contract and Exhibit "A", have been satisfactorily fulfilled. Time is of the essence with respect to the covenants, conditions and obligations contained herein, as well as those set forth in the Exhibit "A" and Exhibit "B".

9. Modification and Changes. The terms of this Agreement may not be modified in any manner except by agreement of all parties.

10. Contract Termination. If the Exhibit "A", is terminated for any reason, the SWCCOG may terminate this Agreement and shall provide written notice of termination of this agreement to the Member Government.

11. Conflicting Provisions. If any term or provision within this Agreement conflicts with any term or provision in Exhibit "A" or Exhibit "B", or imposes on the SWCCOG differing and irreconcilable duties and/or obligations from those duties and/or obligations imposed on the SWCCOG by the grant contract, then the term or provision in Exhibit "A" or Exhibit "B: shall take precedence over the term or provision within this Agreement.

12. Appropriation. The parties do not anticipate that this Agreement will require the appropriation of any funds beyond existing appropriations of The County. This Agreement shall be subject to annual appropriation of sufficient funds for payments pursuant to Section 20, Article X of the Colorado Constitution.

13. Indemnification. Each party, to the extent authorized by law, shall indemnify and hold the other party harmless, as well as their agents, employees, and Directors, from and against any claim, damages, losses and expenses, including but not limited to reasonable attorney's fees and court costs, arising out of or related to that party's failure to properly perform under this agreement, but only to the extent such failure to perform is caused in whole or in part by the intentional or negligent acts or omission of the indemnifying party, or anyone directly or indirectly employed by the indemnifying party, and so long as the other party did not cause, in whole or in part, the indemnifying party not to properly perform.

14. Integration. This Agreement, together with its exhibits is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or modification hereto shall have any force or effect whatsoever.

15. Severability. To the extent that this Agreement may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

16. Waiver. The waiver of any breach of a term, provision or requirement hereof shall not be construed as a waiver of any other term, provision or requirement or any subsequent breach of the same term, provision or requirement.

17. Assignment. Neither the SWCCOG nor The County may assign their right or duties under this Agreement without the prior written consent of the other party. No subcontract or transfer of this Agreement shall in any case release the SWCCOG or the Member Government of their responsibilities under this Agreement.

18. Third Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights and actions relating to such enforcement shall be strictly reserved to the SWCCOG and The County. Nothing contained in this Agreement shall give or allow any claims or right of action whatsoever by any third person. It is the express intention of the SWCCOG and The County that any such person or entity, other than the SWCCOG or The County, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one original Agreement.

20. Signatory Authority. Each person signing this Agreement in a representative capacity, expressly represents the signatory has the subject party's authority to so sign and that the subject party will be bound by the signatory's execution of this Agreement. Each party expressly represents that except as to the approval specifically required by this Agreement; such party does not require any third party's consent to enter into this Agreement.

21. 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 shall be grounds for the non-breaching party to exercise all legal remedies available. Any dispute concerning the performance or interpretation of this Agreement which cannot be resolved by the designated points of contact or their immediate superiors shall be referred to the party's chief administrative officer (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 Court, and the prevailing party shall be entitled to an award of its reasonable attorney's fees, court, and collection costs if it prevails.

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

Montezuma County

Jim Caudelario

Signature

Jim Caudelario Chairman 3/9/2021

Name, Title, Date

Southwest Colorado Council of Governments

Signature

Name, Title, Date

EXHIBIT A

DOLA REDI Grant 20-204

EXHIBIT B

Scope of Work

SWCCOG will retain NeoConnect to complete required NEPA assessments of the environmental and social impact of placing fiber along of US Highway 160/491 south of Cortez.

SWCCOG will ensure the consultant conducts the environmental review per the grant's requirements for this route and the associated forms and requirements under the National Environmental Policy Act ("NEPA"), State Historic Preservation Office ("SHPO"), the Tribal Historic Preservation Office ("THPO"), and the Tribal Employment Rights Ordinance, ("TERO") to the extent these reviews are needed on the route.