

INTERGOVERNMENTAL AGREEMENT FOR CONNEXION COMMUNICATION SERVICES PROVISION IN LARIMER COUNTY

THIS INTERGOVERNMENTAL AGREEMENT FOR CONNEXION COMMUNICATION SERVICES PROVISION IN LARIMER COUNTY (“Agreement”) is made and entered into this ____ day of _____, 2023, by and between the City of Fort Collins (“Fort Collins” or “City”) and Larimer County (“Larimer” or “County”) (collectively the “Parties”).

WHEREAS, voters of Fort Collins and Larimer County, respectively, approved legally required ballot measures at general elections, authorizing each entity to provide services contemplated in Colorado Revised Statutes, Title 29, Article 27, including cable television service, telecommunications service, and advanced service (collectively, “Communications Services”); and

WHEREAS, Fort Collins is a home-rule municipality which has undertaken the financing, construction, and all further operations to establish a municipal utility for the provision of Communications Services, branded as “Fort Collins Connexion” (“Connexion”); and

WHEREAS, Larimer County is a statutory county that wishes to provide its residents access to high-quality Communications Services; and

WHEREAS, to provide reliable, competitive, and cost-effective Communications Services, the Parties each desire to collaborate with neighboring governments or communications enterprises, to leverage resources and efficiencies for the benefit of each party’s residents and ratepayers; and

WHEREAS, Connexion has the network infrastructure necessary to provide robust Communications Services to Larimer County residents located both in enclaves within the City of Fort Collins and unincorporated areas outside the City; and

WHEREAS, Larimer County does not currently have the financial or institutional means to directly provide such Communications Services to its residents and would benefit from engaging Connexion to deliver such services; and

WHEREAS, to facilitate Connexion to develop the infrastructure necessary to provide Communications Services to Larimer County residents in the Fort Collins surrounding area, and other portions of unincorporated Larimer County as identified by the Parties under this Agreement; and

WHEREAS, as Colorado governmental entities, Fort Collins and Larimer County are authorized, pursuant to Colo. Const. art. XIV, § 18(2)(a) and C.R.S. § 29-1-203, to cooperate or contract with one another to acquire or provide any government function, service, or facility lawfully authorized to each.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. **Grant of Access.** Larimer County grants Fort Collins the authority to enter any and all parts of Larimer County to provide Communications Services. This access encompasses the right to provide Communications Services to Larimer County residents—natural persons, commercial enterprises, or otherwise - as well as install and maintain Communications Services facilities to serve such residents. By this grant of access, Larimer County does not purport to convey, nor does the City purport to receive, the right to enter private property that would require permission from private entities, including natural persons or corporate entities, for access to provide Communications Services. Larimer County will grant Connexion access to all County owned rights of way through its permitting process to deliver Communication Services to Larimer County residents. Access shall not occur prior to the appropriate and necessary permit(s) being issued. Access granted by Larimer County shall not impede or otherwise violate any other existing agreements with other parties and shall be subject to any existing rights or privileges of third-parties.
2. **Work Funded by Larimer County to be Performed by Connexion.** In its sole and absolute discretion, Connexion shall design and construct Communications Services facilities (the “Work”) to serve as many Larimer County communities and properties as practicable with the Larimer Funding defined in each **Exhibit A-Work Order**, attached hereto and incorporated by reference. For each Larimer County community in which County-funded Work will be completed, a Work Order in the form illustrated in Exhibit A (an “**Exhibit A-Work Order**”) must be completed in advance. The Work under each Exhibit A-Work Order shall be performed in a good and workmanlike manner and in accordance with applicable laws. The Scope of Work is further defined in each **Exhibit A-Work Order**. While Connexion shall retain authority to make decisions about construction and delivery of Communications Service, Larimer shall have authority to determine which neighborhoods and general areas of Larimer County will receive priority in the execution and performance of the Work as set forth in the applicable Work Orders.
3. **Service Commitment.** Unless this Agreement is terminated according to Section 12, and subject to continuous operation of such service during the period, Connexion shall
 - provide continuous availability of broadband internet service to Connexion customers in any area of the County, where the necessary Work has been funded through a Work Order under this Agreement; and
 - maintain such service for a 25-year period to be calculated from the date the first unincorporated property may be served, subject to such service interruptions as may reasonably arise or occur, and to such terms, conditions, customer class tiers, and rates as Connexion shall impose on such service in the normal course of its business and operations; and
 - this obligation shall not remain in effect in the event Connexion ceases operations.

4. **Term.** This Agreement shall be effective from the date first written above and shall not terminate unless as provided in Section 12, including when a party defaults under the terms of the Agreement, the non-defaulting party provides notice of such default, and default is not cured within thirty (30) days of receipt of notice.
5. **Costs and Revenues.** Larimer shall provide each block of Larimer Funding associated with each respective **Exhibit A-Work Order** prior to initiation of the Work by Connexion under such Work Order. Thereafter, Connexion shall be solely responsible for all costs related to providing the Communications Services described in each **Exhibit A-Work Order**. Connexion shall be solely entitled to the revenues generated by the provision of the Communications Services, except as may be described in an **Exhibit A-Work Order**. In the event that the Parties determine that cost-sharing or revenue-sharing is justified for some part of the Communications Services provided under this Agreement, they shall address cost-sharing or revenue-sharing in the **Exhibit A-Work Orders**. Any such Work Orders shall be subject to the approval of the City Council or other City authority to the extent required under the City's Charter and Code or other applicable laws.
6. **Ownership and Management of Communications Services Facilities.** Connexion shall have and retain control and ownership of the facilities constructed as part of the Work under any Work Order or used by Connexion to provide Communications Services in Larimer County. Any issues that may arise in the construction and management of the physical fiber network shall remain entirely within Connexion's control and discretion and are outside the scope of this Agreement.
7. **Permitting and Franchise Requirements.** Connexion's installation and maintenance activities remain subject to all applicable permitting requirements, including Larimer County right-of-way rules. Any cable television service, as defined by C.R.S. § 29-27-102(2), that Connexion may offer to its customers shall be subject to any franchise requirement that may exist under Larimer County's laws.
8. **Records and Audits.** The City will maintain complete and accurate records of all charges incurred for the Work, in accordance with generally accepted accounting principles, for a period of thirty-six (36) months from the date of termination or completion of the Work. Larimer will have the right to inspect the City's records relating to the Work at reasonable times and upon reasonable notice and to retain copies thereof. Such records will include: (i) the date(s) Work was performed; (ii) a description of the Work performed; (iii) names of the individuals or subcontractors performing the Work; (iv) hours worked; (v) billing or compensation rate for the Work; and (vi) all other expenditures required for the completion of the Work. In the event of a disagreement about the use of the County Funds, the parties agree to work in good faith to resolve such disagreement.
9. **Procurement.** In procuring goods and services for the Work, the City shall comply with all applicable laws, rules, and regulations applicable to City procurements. Notwithstanding any other provision of this Agreement, the City shall retain full

discretion and authority in determining the terms of bidding related to the Work, the project delivery method, the project design, the letting of contracts for construction, construction oversight, and budget management.

10. **Compliance with Law.** The City shall be solely responsible for obtaining and maintaining any required permits, including Larimer County right-of-way permits, and for complying with all applicable laws and regulations relating to the Work, including but not limited to safety, construction, easements, and employment laws and regulations.
11. **Insurance.** Fort Collins shall obtain and keep in full force and effect general liability insurance or comparable self-insurance covering its actions and activities permitted under this Agreement in an amount at least equivalent to the City's liability under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. The City shall ensure that any subcontractor maintains all insurance customary for the completion of the Work as required by this Agreement.
12. **Termination.**
 - a. Termination for Convenience. Upon 30 days written notice, Larimer may terminate this Agreement in whole or in part if it determines, in its sole discretion that termination is in Larimer's best interests. After notice of termination has been given, the City and all subcontractors shall stop Work on the cancellation date specified in the notice.
 - b. Termination for Cause. Either party may terminate this Agreement in the event the other party is in default of its obligations under this Agreement and fails to substantially cure the default within thirty (30) days following written notice from the other party; provided, however, that if such default by nature cannot reasonably be cured with due diligence within thirty (30) days, then the defaulting party shall continue to diligently pursue a cure within sixty (60) days of receiving notice.
 - c. Effect of Termination. In the event of termination for convenience or cause, the City will be compensated for any Work performed prior to the date of termination that may exceed the Larimer Funding; however, the City will not be reimbursed for any anticipated work not otherwise in an **Exhibit A-Work Order** or future profit. Larimer's obligation to pay the City for all Work performed in reliance on an **Exhibit A-Work Order** shall survive termination of this Agreement. Despite any termination, Connexion shall retain the right to have and maintain its Communication Service Facilities that exist in Larimer County as of the date of termination and provide Communications Service to any property that is served or capable of being served (i.e., connected for service whether or not the property is taking service) as of the date of termination. In the event of termination for convenience or cause and after the City is reimbursed for all costs of the portion of the Work completed up to the date of termination, the City shall refund Larimer any prepaid portion of the funded amount that exceeds the cost of Work.

13. **Appropriations.** Neither Party shall have an obligation to continue this Agreement in any fiscal year in which no such appropriation is made and a termination in such a fiscal year shall not be considered default. Payment pursuant to any revenue sharing obligations set forth in an **Exhibit A-Work Order** shall similarly be subject to annual appropriation, except that any revenues collected or receivable up to the date of termination shall be deemed already appropriated and subject to any revenue sharing obligations set forth in an **Exhibit A-Work Order**.
14. **Assignment.** The Parties cannot assign the right or responsibilities of this Agreement without written agreement from the other party.
15. **Continuing Effect of Agreement.** All other terms and conditions of the Agreement shall remain in full force and effect according to the provisions thereof.
16. **Notices.** Written notices required under this Agreement and all other correspondence between the Parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested or as may be updated in each Exhibit A-Work Order:

If to Fort Collins: Chad Crager, PE
Fort Collins Connexion
222 Laporte Ave.
Fort Collins, CO 80521
ccrager@fcgov.com
970-212-2900

With copies to: Fort Collins City Attorney's Office
300 Laporte Ave.
PO Box 580
Fort Collins, CO 80521

If to Larimer County: Mark Pfaffinger, CIO
Larimer County, Information Technology
200 West Oak Street, Suite 4100
Fort Collins, CO 80521
pfaffima@co.larimer.co.us
970-498-5050

With copies to: Larimer County Attorney's Office
Broadband Matters
PO Box 1606
Fort Collins, CO 80521
970-498-7450

17. **Amendment.** Except as provided below, approval of amendments to this Agreement will be managed according to the respective approval policies of each Party. The Parties

expressly agree to allow mutual administrative approval of amendments at any time upon notice to the participating Parties listed and notice contacts in Section 16 above.

18. General Terms

- a. Subject to Appropriation; No Multiple Year Obligation. It is understood and agreed by the Parties that any obligation of Fort Collins or Larimer County hereunder, whether direct or contingent, shall extend only to funds appropriated by the Parties' respective governing bodies and encumbered for the purpose of this Agreement. The Parties do not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years. Likewise, this Agreement shall not create a multiple-fiscal year direct or indirect debt or financial obligation of either Fort Collins or Larimer County.
- b. Employee Status. All employees of each governmental entity who perform any services in relation to this Agreement shall remain the employees solely of the governmental entity employing them to perform such services and not of any other party hereto. No Party shall obtain, by virtue of paying or being reimbursed for or paying for costs under this Agreement, any direct control over the management, scheduling or facilities of the other Party.
- c. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, by any Party, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.
- d. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the Parties.
- e. No Third-Party Beneficiary. The Parties understand and expressly agree 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 Parties. Nothing contained in this Agreement shall give or allow any such claim or right of action by any third person. It is the express intention of the Parties that any person other than the signatory hereto receiving benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- f. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- g. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

- h. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.
- i. Legal Constraints. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States and imposed upon the Parties by their respective local laws, including, charters and local codes. Subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall either of the Parties exercise any power or take any action which shall be prohibited by applicable law.
- j. Counterparts. This Agreement may be executed in separate counterparts, and the counterparts taken together shall constitute the whole of this Agreement.
- k. Electronic Signature. This Agreement may be executed by electronic signature.

[Signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY OF FORT COLLINS

By: _____
City Manager

ATTEST:
By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

LARIMER COUNTY

By: _____
County Commissioner

ATTEST:
By: _____
County Clerk

APPROVED AS TO FORM:

By: _____
Deputy County Attorney

EXHIBIT A

Work Order #_001___ - dated_____, 2023

**to Intergovernmental Agreement
for Connexion Communication Services Provision in a Portion of Larimer County**

- A. **Scope of Services.** The scope of work related to the funded fiber optic network design and installation includes management, network engineering design, material procurement and construction of the fiber optic network. Portions of the fiber optic network covered by this work order are further defined below.

The subject fiber optic network installations are anticipated to primarily serve residential customers.

- B. **Funding by Larimer County.** Larimer shall provide Connexion up to three million five hundred eighty thousand dollars (\$3,580,000) in Communication Service Funding (“Larimer Funding”) for the Work described in Exhibit B hereto. Larimer shall give the City notice to proceed and provide Connexion the Larimer Funding no later than 30 days before Connexion engages in any portion of the Work. Upon receipt of the Larimer Funding, Connexion shall undertake the Work in a timely manner. Eligible uses of Larimer Funding include, but are not limited to, all costs related to reasonable and necessary design, engineering, labor, licenses, outside plant and service drop installation, permitting, materials, supplies, equipment, equipment rentals, reimbursables, federal, state, and local income taxes, payroll, withholding and unemployment taxes, and other costs necessary in the performance of the Work. Connexion shall not treat Larimer Funding as revenue or profit for provision of Communications Service. In the event the Work has not been initiated within one year (three-hundred and sixty-five days) of Larimer providing the funding to Connexion, Larimer shall be permitted to require Connexion to return the Larimer Funding along with any interest that has accrued in connection with the funds, if the funds have been invested in an interest-bearing account.

- C. **Optional Revenue Sharing Between Parties.** Provided that Connexion undertakes the Work and provides Communications Service to any property in Larimer County with the support of the Larimer Funding extended under this **Work Order #001**, Connexion will share a portion of recurring customer service revenue with Larimer in recognition of the Larimer Funding as follows:

1. **25% Revenue Share.** Beginning one year after Connexion initiates Communications Service to any property as a result of the Larimer Funding and continuing until Connexion has shared with Larimer a sum up to the total amount of the associated Larimer Funding, on an annual basis Connexion will distribute 25% of its Customer Revenue to Larimer. “Customer Revenue” shall mean the revenue Connexion receives from Communications Service subscribers for internet service packages, served as a direct result of Work completed with the Larimer Funding administered under this **Work Order #001**, as depicted in Exhibit B. “Customer Revenue” shall

not include any taxes, fees, or charges that Connexion must remit to any regulatory or governmental body (including the City of Fort Collins) on the customer's behalf or on Connexion's own behalf.

2. **Customer Revenue Sharing Only Applies to Properties in Unincorporated Larimer County.** The City's obligation to reimburse Larimer shall only apply to Communications Service provided to properties in unincorporated Larimer County as a direct result of and at the time of Larimer's funding provided under this Work Order. Furthermore, the City's reimbursement obligation under this Agreement shall in no way extend to revenues, facilities, goods or assets, that are and/or were funded by bond proceeds garnered by the City of Fort Collins and are subject to any bond covenant whatsoever (i.e., any revenues or assets associated with property within Fort Collins Light and Power's electric service territory).
3. **Larimer Responsible for Its Use of Funds.** Larimer is responsible for compliance with any laws, regulations or restrictions applicable to its use of funds to pay the City for the Work under this Work Order or funds reimbursed to Larimer by the City.

Service Area Map and Work Definition.

Map of Service Area

Work Definition

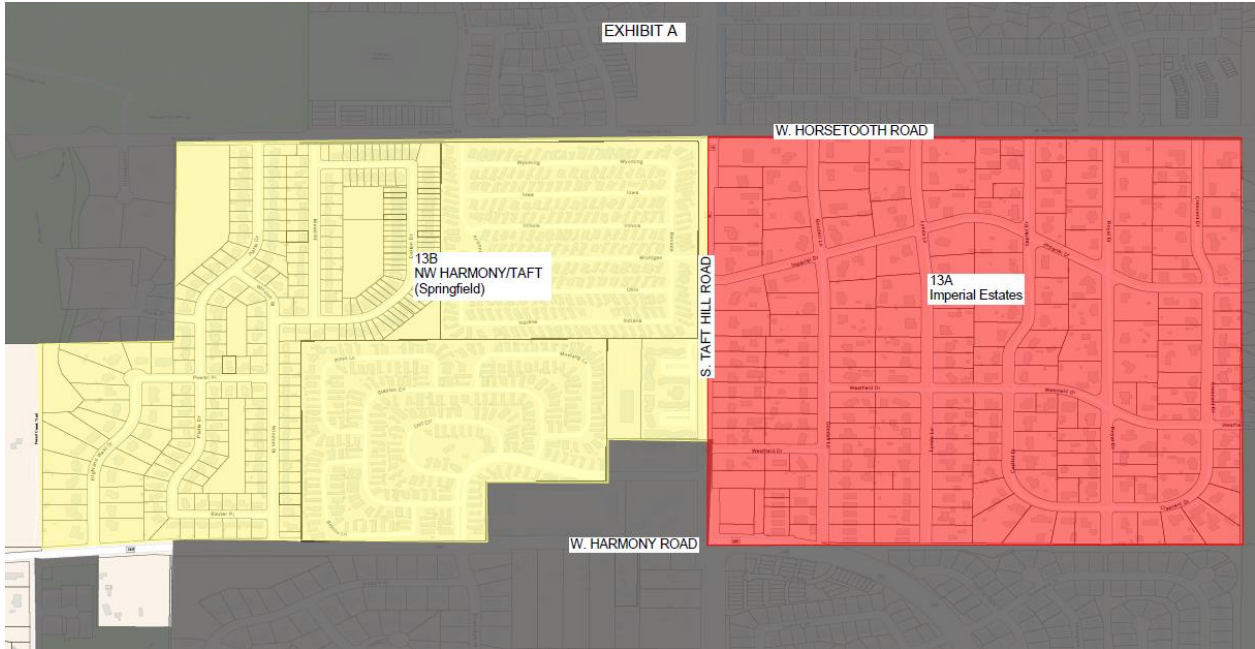


Exhibit B

Scope of Work

The scope of work related to this work order for fiber optic network design and installation services includes management, network engineering design, material procurement and construction of the fiber optic network. Each portion of the fiber optic network subject to Work Order is further defined below. Design plans representing service areas are provided in Exhibit A.

Imperial Estates – Area 13A

Installation of underground distribution conduit and fiber optic cable. Fiber optic service drop installation for approximately 203 premises within the service area. Service drops include installation of drop cable, splice enclosure, network interface device, wireless router and in-home network devices for customers acquiring service within this area in connection with the performance of the Work.

NW Harmony and Taft Hill Roads – Area 13B

Installation of underground distribution conduit and fiber optic cable. Fiber optic service drop installation for approximately 837 premises within the service area. Service drops include installation of drop cable, splice enclosure, network interface device, wireless router and in-home network devices for customers acquiring service within this area in connection with the performance of the Work.