

RESOLUTION NO. 7

SERIES 2020

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND SUMMIT COUNTY GOVERNMENT CONCERNING THE PROJECT THOR MIDDLE MILE BROADBAND NETWORK

WHEREAS, the Town of Breckenridge and Summit County Government are each authorized by the provisions of Article XIV, Section 18(2)(a), Colorado Constitution, and Sections 29-1-201, et. seq., C.R.S., to enter into contracts with each other for the performance of functions that they are authorized by law to perform on their own; and

WHEREAS, the Town and Summit County Government desire to enter into an agreement to provide local broadband solutions for the community utilizing the Project THOR Middle Mile Broadband Network owned by the Northwest Colorado Council of Governments; and

WHEREAS, a proposed Intergovernmental Agreement between the Town and Summit County Government has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto, and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement and finds and determines that it would be in the best interest of the Town to enter into such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Intergovernmental Agreement between the Town of Breckenridge and Summit County Government (**Exhibit "A"** hereto) is approved, and the Town Manager is hereby authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. This resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS 25th DAY OF FEBRUARY, 2020.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation


By: \_\_\_\_\_

Eric S. Mamula, Mayor

ATTEST:

  
\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk

APPROVED IN FORM

 2/25/20  
\_\_\_\_\_  
Town Attorney                      date

INTERGOVERNMENTAL AGREEMENT

Among

SUMMIT COUNTY, COLORADO And

THE TOWN BRECKENRIDGE, COLORADO

**THIS INTERGOVERNMENTAL AGREEMENT** (this "Agreement") is made and entered effective as of November 1, 2019 ("Effective Date"), among SUMMIT COUNTY, COLORADO (the "County"), a body corporate and political subdivision of the State of Colorado (the "State"), and the TOWN BRECKENRIDGE, COLORADO (the "Town"), a Colorado municipal corporation. The County and the Town are referred to collectively herein as "the Parties" or individually as "a Party."

**WHEREAS**, pursuant to title 29, article 1, part 2, Colorado Revised Statutes, as amended, and Article XIV, Section 18 of the State Constitution, governments may contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units and any such contract may provide for the joint exercise of the function, service or facility; and

**WHEREAS**, the Parties desire to enter into this Agreement to provide local broadband solutions for the community utilizing the Project THOR Middle Mile Broadband Network owned by the Northwest Colorado Council of Governments (the "NWCCOG"); and

**NOW, THEREFORE**, the Parties agree as follows:

## **I. DEFINITIONS**

In addition to words defined parenthetically in this Agreement, the following words shall have the following meanings:

**"Force Majeure"** means any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that Party, including, without limitation, strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such Party is not responsible or which is not in its power to control.

**"MRC"** means the monthly recurring cost of a Service which will be as set forth in Section IV (1)(b) as agreed upon by the Parties and documented on a Service Order, as applicable.

**"Network" or "Project THOR"** means the limited infrastructure included as part of the THOR network infrastructure and will not include access to any network assets or infrastructure owned, leased and/or operated by Summit County Government or Colorado Department of Transportation, except as those network assets or infrastructure are included as part of THOR network infrastructure.

**"NRC"** means the costs associated with the construction of the Breckenridge Meet Me Center.

**"Project THOR MEET ME CENTERS" or "MMCs"** means the Meet Me Center hosted by the County and the Town. The Meet Me Centers are referred to collectively as

“MMC” or individually as “Breckenridge MMC” and “Frisco MMC”.

“Service(s)” means the services particularly described in each Service Order.

“Service Order(s)” means fully-executed orders for specific Services on the standard Service Order forms, including attachments thereto. Each Service Order shall be issued and accepted by the Parties in accordance with the provisions of this Agreement. Each Service Order will contain specific provisions with respect to prices, features, locations, descriptions of service, duration, Service Level Agreements and other terms as appropriate.

“Transport” means the intra-network traffic between MMC Host locations independent of network traffic connecting to the Internet.

## II. SCOPE OF AGREEMENT

This Agreement establishes general terms and conditions which apply to the Services being supplied by the County to the Town pursuant to this Agreement. Each Service Order issued and accepted hereunder, and the Services ordered there under, shall be subject to the terms of this Agreement.

This Agreement further establishes the general terms and conditions regarding the building, maintenance, costs and profit sharing of the Breckenridge MMC and Frisco MMC.

## III. SERVICES

**Section 1. Internet Usage.** To the extent the Services are used in connection with the Town’s use of the Internet, the Town warrants and represents to the County that the Services will be used only for lawful purposes, and the Town shall not transmit, retransmit or store material in violation of any federal or state laws or regulations.

**Section 2. Sole Use of the Town.** The Town agrees that the contracted Services are for its sole use, and may not, under any circumstances, be used, re-sold, sub-let, shared or traded in any way unless agreed to in a Service Order.

**Section 3. Payment for Services.** Payment and invoicing shall be made handled per the following:

a. **Invoicing and Payment.** An invoice for Services per a Service Order will be sent to the Town quarterly. The Town will pay all amounts owed under each Service Order within thirty (30) days after the invoice date (the “Due Date”). The County reserves the right to charge interest on delinquent amounts at the lower of one and one-half percent (1.5%) per month or such other rate or rates as may be permitted under applicable law.

b. **Disputed Payments.** In the event the Town, in good faith disputes any charges invoiced by the County, the Town shall promptly pay all undisputed charges, and shall notify the County in writing of any such disputed amounts within 60 days of the Due Date, identifying

in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely (within 60 days of the Due Date) and appropriately disputed shall be deemed final and not subject to further dispute. The County will review the amounts in dispute within thirty (30) days after its receipt of such notice. If the County determines that the Town was billed in error, a credit for the amount billed incorrectly will be made to the next invoice. If the County and the Town determine that the amount was billed correctly, the Town will pay the amount by the Due Date of the next invoice.

**Section 4. Service Levels.** Service is backed by the following Service Levels:

a. Installation Service Level. The Parties acknowledge that the County installed the Service prior to the execution of this Agreement.

b. Maintenance. An excused outage "Excused Outage" shall mean any preventative, routine or scheduled maintenance that is performed on a Service, the MMCs, County Facilities, the Network, or any component thereof, that is reasonably likely to affect the Service, for which the County shall provide at least ten (10) days' notice of timing and scope to the Town.

Additionally, an Excused Outage may also include unscheduled system maintenance or system repairs, upgrades and reconfigurations; issues resulting from mechanical or electronic breakdowns; public emergency or necessity; Force Majeure; or restrictions imposed by law which, may result in temporary impairment or interruption of Service. As a result, the County does not guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Service without notice based on these exceptions.

The Town releases the County and its elected officials, officers, employees and agents from any and all obligations, charges, claims, liabilities, opportunity costs and fees incurred, whether foreseeable or unforeseeable, as the result of Service interruption, omission or degradation, including the impact resulting to the Town.

c. Managed Network Services and Support. The County will provide access to Tier I and Tier II network support during standard business hours of Monday through Friday from 8:00AM MT to 5:00 PM MT. Further service outage support will be provided by the County via network operator Visional Communications Inc., dba Mammoth Networks (Mammoth). Mammoth operates a 24-hour monitoring center with support access to the THOR Network infrastructure for all support issues. The County is responsible for notifying all THOR customers of network service interruptions and when support services are being provided by Mammoth.

To report any service outage or other service issues to the County, the Town can contact the County IS Service Desk at 970-453-3510 or [servicesdesk@summitcountyco.gov](mailto:servicesdesk@summitcountyco.gov) Monday through Friday between the hours of 8:00 AM MT and 5:00 PM MT.

d. Network Monitoring. Network monitory logs without interpretation will be provided upon the Town's request.

e. Availability of Service Level. The County shall provide Level 2 (Ethernet) service at an availability service level of 99.9%. Network down time will be calculated based on a network outage, which causes the Town to fully lose service delivery. The County, via the

network operator, Mammoth, is responsible for backup transport and the process of failing over to the backup transport in the event of a network outage. The service availability set forth in this section shall not apply to service unavailability caused by an Excused Outage outlined in Section IV(4)(b) of this agreement.

- i. The Town shall be entitled to an outage credit based upon the monthly Service Unavailability experienced except as provided in Section IV(4)(b). The amount of credit shall be calculated according to the following schedule:

Monthly Service Level Availability Percentage		Outage credit %
Upper Level	Lower Level	% of MRC credit per affected Service
100%	>=99.9%	0%
<99.9%	>=99.5%	5%
<99.5%	>=99.0%	10%
<99.0%	>=95.0%	25%
<95.0%	>=90.0%	50%
<90.0%	>=00.0%	100%

- f. Latency. The average transit delay ("Latency") will be measured via roundtrip pings. Latency for the Service will not exceed 10ms. The Town shall be entitled to a latency credit based upon the following schedule:

Maximum	Latency Credit (as a % of the MRC for the Affected Service)		
10ms	11 - 15ms = 10 %	16-20ms = 25%	> 20ms = 50%

- g. Jitter. Jitter is a measurement of the interpacket delay variance of the Service and is measured by generating synthetic user datagram protocol (UDP) traffic. The Town shall be entitled to a jitter credit based upon the following schedule:

Maximum	Jitter Credit (as a % of the MRC for the Affected Service)		
1ms	1.1 - 2ms = 10 %	2.1 - 3ms = 25%	> 3ms = 50%

#### IV. MEET ME CENTERS

##### Section 1. Payment and Invoicing.

a. Non-Recurring Cost (NRC). The Parties have agreed to share the NRC associated with Project THOR and the building and installation of the Breckenridge MMC. The County shall pay 40% and the Town shall pay 60% of the total NRC. The Town will invoice the County by April 1, 2020 for the NRCs associated with the Breckenridge MMC. Payment will be due within thirty (30) days of receipt.

- b. Project THOR Monthly-Recurring Costs (MRC). The Parties have agreed to

equally split the MRCs for the MMCs minus any revenues received on the Network. The County and Town will mutually agree on a method for calculating the shared cost.

c. Invoice. The County shall invoice the Town for MRCs every six (6) months in June and December of each year for the upcoming 6-month period. Each invoice will include a detailed calculation of the amount due. Payment will be due within thirty (30) days of receipt.

There may be an annual adjustment to the MRC based on the overall financial stability and revenues received on the Network. Future adjustments to rates or Services purchased shall be documented in mutually executed Service Orders, subject to the terms and conditions of this Agreement.

d. Utilities for Breckenridge MMC. The Parties agree to split the monthly cost of utilities equally for the Breckenridge MMC. The Town shall invoice the County every six (6) months in January and July of each year for the previous 6-month period. If the County, determines that the utility lines interfere with the use or development of the County's property on which the Breckenridge MMC has been located ("County Property"), the County may relocate the utility lines to a mutually agreed upon location. The Parties agree the cost of relocation shall be split equally between them.

**Section 2. Building Specifications and Maintenance.** The Parties acknowledge that the Town constructed the Breckenridge MMC prior to the execution of this Agreement, and that the Town has issued a certificate of occupancy for such building.

a. County Right to Relocate. The location of the Breckenridge MMC is depicted in Exhibit A. If the County, determines that the location of the Breckenridge MMC interferes with the use or development of the County Property, the County may relocate the Breckenridge MMC to a mutually agreed upon location. The Parties agree the cost of relocation shall be split equally between them.

b. Equipment Specifications. It is agreed that the Breckenridge MMC meets all of the equipment requirements as described in Exhibit B.

c. Maintenance. Town staff shall be responsible for performing or having performed any routine building maintenance required for the Breckenridge MMC. The Parties agree to equally split the cost of routine maintenance. The Town shall invoice the County every six (6) months in January and July of each year for the previous 6-month period.

**Section 3. Lease Revenue.** The Parties agree to equally split any lease revenues from the Breckenridge MMC and Frisco MMC. The County shall oversee the leases for both MMC locations. County shall provide Town with an accounting and payment of any revenue in invoices issued in December and June of each year.

**Section 4. Participation in Project THOR.** If Project THOR ends, is terminated, or if the County decides not to participate in Project THOR, this Agreement shall terminate and the Parties shall enter into a new agreement regarding the future use of the Breckenridge MMC.

### III. GENERAL PROVISIONS

**Section 1. Term.**

a. Initial Term. The initial term of this Agreement commenced on the Effective Date ("Initial Term") and shall terminate on December 31, 2022. The Initial Term is required by the Colorado Department of Local Affairs as part of the Project THOR program grants received and managed by NWCCOG. The Parties understand and agree that notwithstanding the Effective Date of this Agreement the Project THOR Network depends upon completion of various MMC's and fiber builds and will occur over a 3-6 month period, after which time the Parties expect that all entities will have completed construction work to facilitate the Services anticipated under Project THOR.

b. Renewal. Unless otherwise terminated as provided in Article III(2), this Agreement will automatically renew for up to five (5) additional three (3) year terms (each a "Renewal Term") unless either Party gives notice of termination to the other Party not less than 180 days prior to the end of a Renewal Term. If notice of termination is properly given, this Agreement shall terminate at the end of the applicable three (3) year renewal term.

**Section 2. Termination and Default.**

a. Voluntary Termination. This Agreement can be terminated by either Party at any time with one hundred eighty (180) days written notice after the Initial Term.

b. Default. The failure to comply with any of the terms and conditions of this Agreement shall constitute a default under this Agreement. If either Party believes the other Party has failed to comply with any of the terms and conditions of the Agreement, the non-defaulting Party shall provide written notice of such alleged breach to the defaulting Party with specificity. The defaulting Party shall have the right to cure any alleged breach within thirty (30) days of receipt of such notice or, in the event of a default not capable of being corrected within thirty (30) days, the defaulting Party shall commence correcting the default within thirty (30) days of receipt of notification thereof and thereafter correct the default with due diligence.

In the event that the defaulting Party fails to cure that breach within thirty (30) days after receiving notice, the other Party may terminate this Agreement immediately upon written notice of the Party in breach.

**Section 3. Contract with Intergovernmental Entity.**

a. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the either Party within the meaning of Colorado Constitution Article X, Section 20, or any other constitutional or statutory provisions. Each Party's fiscal obligations hereunder are expressly conditional upon annual appropriation by its respective governing body, in its sole discretion. The Parties understand and agree that any decision by a governing body to not appropriate funds for payment shall result in termination of this Agreement. If any Party is not going to appropriate funds for its next fiscal year to continue under this Agreement, it shall utilize best efforts to advise the other Party of the intent not to appropriate by October 1<sup>st</sup> of each year.



b. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., or any other applicable law, as now or hereafter amended.

**Section 4. Miscellaneous Provisions.**

a. Entire Agreement. This Agreement and all Exhibits represent the entire agreement between the Parties and there are no other promises or conditions in any other agreement whether written or oral. This Agreement supersedes any prior written or oral agreements between the Parties.

b. Severability. If any provision of this Agreement is invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

c. Limitation on Liability. Neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

d. Notice. All notices required to be given to the Parties by this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile or electronic mail message was received.

1. Notices to the County shall be addressed to:

Sarah Vaine  
Assistant County Manager  
Summit County Government  
P.O. Box 68  
Breckenridge, CO 80424  
Sarah.Vaine@SummitCountyCo.Gov

2. Notices to the Town shall be addressed to:

Shannon B. Haynes  
Assistant Town Manager  
PO Box 168  
Breckenridge, CO 80424  
[shannonh@townofbreckenridge.com](mailto:shannonh@townofbreckenridge.com)

If either Party changes its address during the term herein, it shall so advise the other Party in writing as herein provided and any notice thereafter provided to be given shall thereafter be sent by certified mail to

such new address.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

f. Jurisdiction. Venue for any judicial dispute between the Parties arising under or out of this Agreement shall be proper only in the state court of Summit County, Colorado.

g. Authority to Execute. The individual executing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms.

h. Waiver. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. Both Parties expressly reserve all rights they may have under law to the maximum extent possible, and neither Party shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.


i. No Joint Venture. The relationship between the Parties shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes. The Parties, in performing any of their obligations hereunder, shall be independent contractors and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

j. Survival. Any provision of this Agreement, which by its nature extends beyond the term hereof or which is required to ensure that the Parties fully exercise their rights and perform their obligations hereunder shall survive the expiration or termination of this Agreement.


k. Headings. Headings used in this Agreement are provided for convenience only and will not be used to construe meaning or intent.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties effective as of the Effective Date set forth above.

TOWN OF BRECKENRIDGE

By:   
Rick G. Holman, Town Manager

SUMMIT COUNTY, COLORADO

By:   
Scott Vargo, County Manager

