

RESOLUTION NO. 1709

**A RESOLUTION OF THE GOLDEN CITY COUNCIL  
AUTHORIZING THE CITY MANAGER TO SIGN A  
MEMORANDUM OF UNDERSTANDING (MOU) WITH OTHER  
CITIES AND COUNTIES IN OUR REGION TO SEEK PRIVATE  
DEVELOPMENT OF A WIRELESS BROADBAND NETWORK**

WHEREAS, all residents and businesses of Golden require high speed internet access; and

WHEREAS, several cities and counties in our area are joining together to solicit private sector interest to provide wireless, high speed internet access throughout the region; and

WHEREAS, the Golden Urban Renewal Authority (GURA) has agreed to provide the City's required financial contribution because doing so will enable GURA to achieve its priority objective of Downtown Wireless Access at less cost.


THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. The City Manager is authorized to sign the attached MOU and subsequent technical revisions.


Section 2. The City Manager is authorized to assign staff members to the consortium board.

Section 3. The City Manager will keep council informed of consortium process.

Adopted this 28th day of September, 2006.

  
\_\_\_\_\_  
Charles J. Baroch  
Mayor

ATTEST:

  
\_\_\_\_\_  
Susan M. Brooks, MMC  
City Clerk

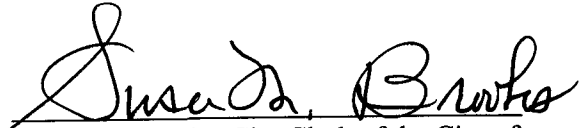
Approved as to form:

  
\_\_\_\_\_  
James A. Windholz  
City Attorney


I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 28th day of September, A.D., 2006.

(SEAL)

ATTEST:

  
Susan M. Brooks, City Clerk of the City of  
Golden, Colorado

**A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITIES OF  
LAKEWOOD, BOULDER, THORNTON, ARVADA, AND THE CITY AND COUNTY  
OF BROOMFIELD TO SEEK PRIVATE SECTOR DEVELOPMENT OF A REGION-  
WIDE WIRELESS BROADBAND NETWORK**

1.0 **PARTIES.** This Memorandum of Understanding ("MOU") is entered into and effective this 1<sup>st</sup> day of September 2006, between the Cities of Lakewood, Boulder, Thornton, Arvada, and the City and County of Broomfield ("Member Entities" and also referred to as "Founding Member Entities") collectively or "Member Entity" individually). 

2.0 **RECITALS.**

2.1 Each Member Entity shares similar concerns and objectives with regard to ensuring the provision of high-quality broadband services within their respective jurisdictions.

2.2 The sharing of resources and information, and the cooperation in the exploration of the feasibility and possible deployment of a wireless broadband network would benefit the citizenry of the parties.

2.3 Member Entities wish to address common concerns, investigate mutual solutions to challenges, and new means of achieving common objectives pertaining to wireless broadband networks, so as to ensure the best possible competitive broadband services to all residents, businesses, organizations, visitors and governmental entities within their respective jurisdictions. Towards that end, the Member Entities wish to share information and financial resources to determine if there is an appropriate private sector entity interested in utilizing various public assets in the deployment of a state of the art wireless broadband network to provide broadband services to residents, businesses, organizations and visitors of the Member Entities. To the extent possible, and without predetermining a specific outcome, the Member Entities will seek to consider options that will avoid the necessity of seeking voter approval required by C.R.S. 29-27-101, *et seq.* when local governments provide communications services.

2.4 The cooperative arrangement as described in this MOU will enhance the effectiveness of the Member Entities to facilitate competitive broadband services in each community, and may provide other benefits to the Member Entities as well.

2.5 Each Member Entity is authorized to enter into this MOU to cooperate in determining the feasibility for the development and deployment of a wireless broadband network throughout their communities.

3.0 **EFFECTIVE DATE AND TERM.** This MOU shall take effect on the date set forth above, and shall remain in effect until August 31, 2007 or otherwise terminated as provided in Section 9.0, whichever is sooner.

#### **4.0 FORMATION OF CONSORTIUM.**

4.1 Member Entities hereby form a consortium for the purpose of defining community needs with respect to a wireless broadband network, determining the feasibility of proceeding through a request for proposals or request for information (RFP/RFI), and if determining to be feasible, developing and publishing an RFP/RFI to seek private sector interest in constructing and deploying such a network.

4.2 It is understood and agreed that this MOU is intended to facilitate cooperation between the Member Entities in the furthering of the goals set forth herein, but does not establish a separate legal entity to do so, and, except as set forth herein, this MOU does not authorize any Member Entity to act for another for any purpose whatsoever. This MOU shall provide only for sharing of information, in-kind services and costs by the Member Entities toward the establishment of a common mutual goal, said goal being to study the feasibility of, and possibly pursue and RFP/RFI for the joint development of a wireless broadband network serving all Member Entities. The consortium of Member Entities has no power to enter into contracts, or make direct payments to consultants or legal counsel. Any subsequent agreement with a service provider will first require the Member Entities to enter into an appropriate intergovernmental agreement. Any contract for services provided to the Member Entities during the term of this MOU must be negotiated and paid directly by or through a Member Entity or Entities. Although no separate legal entity is being formed, the consortium may be known as the "Colorado Wireless Communities."

4.3 The consortium is formed by the five Founding Member Entities, and may add additional Member Entities in the future, as described in Section 8.0.

4.4 The parties agree that they shall cooperate so far as possible within the constraints of applicable law to effectuate the intent of this MOU. The consortium shall at all times act within conformity with all applicable laws, statutes and regulations, and Member Entities agree that they will make decisions and act in accordance with the public interest, so as to best benefit their citizens and others whose best interests they represent.

4.5 The Member Entities anticipate that if an RFP/RFI is issued, the Member Entities will evaluate the responses to that document, and the results of that evaluation may suggest the need for an intergovernmental agreement between the parties in order to facilitate the construction and deployment of the wireless broadband network.

**5.0 GOVERNING BOARD, COMMITTEES, AND GROUPS.** The chief administrative officer of each Founding Member Entity shall serve on the Governing Board. The chief administrative officer may designate someone from his or her Entity to serve as his or her designee on the Board, so long as the designee has the authority to bind that Member Entity. Each Member Entity shall additionally appoint an alternate Board member, who shall be entitled to attend all meetings of the parties, and shall act on behalf of a Member Entity when its primary Board Member is not present.

5.1 The Board shall oversee administrative matters, and may establish committees and working groups as needed.

5.2 The Board shall, at its initial meeting, elect a Chair, Vice-Chair, Secretary, and Treasurer, and shall, after that time, conduct elections no less than once per year. An officer may hold a post for consecutive terms.

5.3 The Board shall determine its budget, and the contributions from each Member Entity. The Board shall determine which Member Entity(ies) shall be requested to hold funds in, and disperse funds from a separate line item account held on behalf of the consortium. Budget reports shall be provided to Member Entities quarterly. Notwithstanding anything herein to the contrary, Board members cannot bind their individual jurisdictions to any financial commitment without appropriate approval from the jurisdiction's chief administrative officer, in accordance with the jurisdiction's purchasing and other applicable policies.

5.4 The Board shall meet as often as necessary to accomplish its purposes.

5.5 Board members shall serve without compensation from the consortium. The consortium shall act through the Board, although the Board may vote to delegate specific authority to the officers of the Consortium, or to any committee or working groups the Board may constitute.

5.6 Each Member Entity shall have one vote. There shall be no voting by proxy; a Board member or an alternate must cast all votes in person at consortium meetings. A quorum of no less than one-half plus one of the Member Entities shall be necessary for the conduct of consortium business. Unless otherwise provided in this MOU, decisions of the consortium shall be by a majority vote of those Board members present at a duly called meeting, which shall require at least one week's notice. Notwithstanding the foregoing, the notice requirement may be waived by unanimous consent of the Member Entities.

5.7 The Board shall appoint a project manager who will oversee the day-to-day operation of the wireless broadband network feasibility project. The project manager shall be an ex-officio member of the Board. The Board may remove the project manager or alter his or her duties at any time.

## **6.0 INFORMATION OWNERSHIP.**

6.1 Information Contributed by Member Entities. All information, records, and files shall identify the contributing Member Entity to clearly establish custody of the information for all requests for access to any records of a Member Entity made pursuant to C.R.S. 24-72-201 *et seq.*, or C.R.S. 24-72-301 *et seq.* The Member Entity that contributed the information, record, or file shall be deemed to be the custodian of such records.

6.2 Information Generated by Consortium. The Board shall designate a custodian of records for the consortium. Each Member Entity shall have an equal right to access and obtain copies of any consortium records, including any documents generated by Member

Entities in the furtherance of consortium business, and any documents generated by consultants working on behalf of the consortium through its Member Entities.

## 7.0 FINANCES AND STAFF.

7.1 Except to the extent grant funds are available to the consortium, all costs of pursuing the goals of this MOU, including but not necessarily limited to consultant costs to assist in the RFI/RFP process, shall be paid for from a fund consisting of contributions of each Member Entity. The Member Entities shall determine the amount of contribution of each.

7.2 Nothing in this MOU requires any Member Entity to fund the activities of any other Member Entity.

7.3 Employees of a Member Entity remain the employees of that Member Entity. All staff work of the consortium shall be accomplished by the Member Entity representatives as part of their regular duties for such Member Entity, and/or shall be accomplished through consultants retained by the consortium or individual Member Entities.

7.4 Should this MOU be terminated, and/or when a Member Entity may terminated its involvement in this MOU, any equipment or other assets owned by a Member Entity prior to or during the term of this MOU shall remain the property of that Entity, unless otherwise agreed to by the parties.

8.0 **NEW MEMBERS.** Other local governments that wish to become a part of this MOU may do so by amendment to this MOU approved by each of the Founding Member Entities. The Founding Member Entities are authorized to amend this MOU to accommodate additional local governments wishing to enter into the MOU. The Board shall determine any amount of proportional expenses that may be required of a new Member Entity. These expenses are intended to include costs related to the issuance of the RFP/RFI, associated administrative costs, and legal expenses. It is anticipated that within thirty (30) days of the effective date of this MOU, the Founding Member Entities will take appropriate action to add new Member Entities as described on Exhibit A.

9.0 **TERMINATION.** Any Member Entity may terminate its participation in this MOU with or without cause upon thirty (30) days prior written notice to each of the others. Provided, however that a Member Entity may not terminate its participation if such termination (1) is prohibited by a grant condition of a grant under which that Member Entity received funds, or (2) will result in loss of grant funds to the consortium or to the other Member Entities, unless approved by a majority of the Member Entities. In addition, a majority of the Member Entities may vote to terminate this MOU at any meeting of the Board

The parties agree that each shall perform and carry out commitments between the parties in order to fulfill the agreed upon interests and goals of the consortium. The Board may vote to remove a Founding Member Entity from the Board, or any Member Entity from the consortium due to failure to fulfill commitments to the consortium. Such action shall be taken at a special meeting held by the Board on this subject alone. The effected Member Entity shall be permitted to speak

to the issue but shall not vote on the issue. Any action to terminate a Founding Member Entity from the Board or any Member Entity from the consortium shall require two-thirds majority of the Board in order to be adopted.

#### **10.0 INSURANCE.**

10.1 Member Entities shall, at their own expense, keep in full force and effect during the term of this MOU, and during the term of any extension or amendment of this MOU, insurance reasonably sufficient to insure against the liability assumed by the Member Entities pursuant to the provisions of this MOU. The type and amount of such insurance shall be that which is customarily obtained for similar projects. The Member Entities shall not be relieved of any liability by reason of their failure to secure insurance as required by this MOU or by reason of their failure to secure insurance in sufficient amounts, sufficient durations, or sufficient types to cover such liability. Each Member Entity shall, to the extent required by law, be responsible for the acts and omissions of its own officials and employees and shall not be responsible for the acts or omissions of the officials or employees of other Member Entities.

10.2 The Member Entities do not waive the rights, limitations, and defenses of the Colorado Governmental Immunity Act or other rights or protections as otherwise provided by law.

11.0 **GOVERNING LAW/VENUE.** This MOU shall be governed by the laws of the State of Colorado. Venue for any proceeding shall be in Jefferson, Boulder, Broomfield or Adams County. Notwithstanding the foregoing, the consortium has no power to sue or be sued, and each Member Entity agrees that it shall have no power to bring any legal action under this MOU.

#### **12.0 MISCELLANEOUS.**

12.1 Execution. Member Entities may execute this MOU with separate signature pages.

12.2 Amendment. This MOU may only be amended by a written instrument, signed by the Member Entities.

12.3 Assignment. This MOU shall not be assigned by any Member Entity without the prior written consent of all Member Entities.

12.4 Notices. Any notice required or permitted by this MOU shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Member Entity to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other Member Entity or Member Entities. Such notice shall be deemed to have been given when deposited in the United States mail.

12.5 Paragraph Headings. The headings of the paragraphs are set forth only for

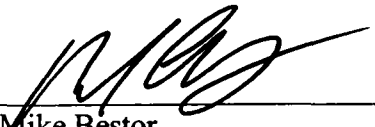
the convenience and reference of the Member Entities and are not intended in any way to define, limit or describe the scope or intent of this MOU.

12.6 Entire MOU/Severability. This MOU represents the entire agreement between the Member Entities and there are no oral or collateral agreements or understandings. If any provision of this MOU is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this MOU shall continue in full force and effect.

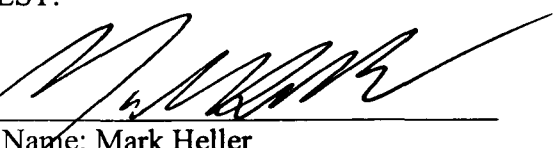
12.7 Fund Availability/Current Expenditures. A Member Entity's participation in this MOU beyond the current fiscal year is contingent upon its governing body's appropriation of funds for such purpose. Member Entities acknowledge and agree that all payment obligations under this MOU are current expenditures of Member Entities, payable in the fiscal year for which funds are appropriated for the payment thereof. The Member Entities' obligations under this MOU shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of Member Entities within the meaning of Article X, Section 20 of the Colorado Constitution.

12.8 No Third Party Beneficiaries. It is the express intention of the Member Entities that any person other than Member Entities receiving services or benefits under this MOU shall be deemed to be an incidental beneficiary only.

CITY OF GOLDEN

By:   
Print Name: Mike Bestor  
Title: City Manager  
Address: 911 Tenth Street, Golden, CO 80401

ATTEST:

By:   
Print Name: Mark Heller  
Title: Executive Director, Golden Urban Renewal Authority

DATE: 1/16/07



EXHIBIT A

INITIAL NEW MEMBER ENTITIES EXPECTED TO BE ADDED AFTER EFFECTIVE  
DATE OF MOU

City of Wheat Ridge  
City of Louisville  
City of Northglenn  
City of Lafayette  
City of Golden  
Town of Superior  
Town of Erie


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CITY OF BOULDER

By:   
Print Name: Frank W. Bruno  
Title: City Manager  
Address: \_\_\_\_\_

OK AC


ATTEST:

By:   
Print Name: S.L. DORJA  
Title: Deputy City Clerk

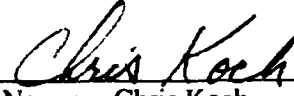
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CITY AND COUNTY OF BROOMFIELD

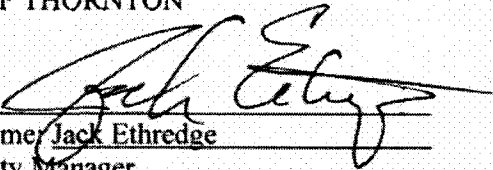
CITY OF ARVADA

By:   
Print Name: Craig G. Kocian  
Title: City Manager  
Address: 8101 Ralston Road  
Arvada, CO 80002

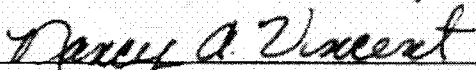
ATTEST:

By:   
Print Name: Chris Koch  
Title: City Clerk  
DATE: 9/6/06

CITY OF THORNTON


By:   
Print Name: Jack Ethredge  
Title: City Manager  
Address: 9500 Civic Center Drive  
Thornton, CO 80229

ATTEST:

By:   
Print Name: Nancy A. Vincent  
Title: City Clerk

DATE: 9-15-06

APPROVED AS TO FORM:

By:   
Print Name: Margaret Emerich  
Title: City Attorney

CITY OF ARVADA

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE: \_\_\_\_\_

CITY OF ARVADA

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE: \_\_\_\_\_

CITY OF WHEAT RIDGE

By: Patrick Galt  
Print Name: Patrick Galt  
Title: Deputy City Manager  
Address: 7560 W. 29th Ave  
Wheat Ridge, CO 80033

ATTEST:

By: Mike Steinke  
Print Name: Mike Steinke

Title: IT Manager

DATE: 11/30/06

EXHIBIT A

INITIAL NEW MEMBER ENTITIES EXPECTED TO BE ADDED AFTER EFFECTIVE  
DATE OF MOU

- City of Wheat Ridge
- City of Louisville
- City of Northglenn
- City of Lafayette
- City of Golden
- Town of Superior
- Town of Erie

City + County of  
Broomfield

By: Karen Stuart  
Print Name: Karen Stuart  
Title: Mayor  
Address: 1 DesCombes Drive  
Broomfield CO 80020

APPROVED AS TO FORM  
Temi Yell  
Deputy City & County Attorney

COUNTY OF BROOMFIELD  
ATTEST:

By: Tricia Kegerreis  
Print Name: TRICIA KEGERRIS  
Title: Deputy City Clerk

DATE: 10/24/2006

CITY OF LAKEWOOD

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE: \_\_\_\_\_

CITY OF THORNTON

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_

TOWN OF SUPERIOR

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

Paul Nilles

Interim Town Manager

124 E. Coal Creek Drive

Superior, CO 80027

ATTEST:

By: Phyllis L. Hardin

Phyllis L. Hardin

Town Clerk

DATE: November 28, 2006

DEC 08 2006

EXHIBIT A

CITY OF NORTHGLENN

By: Steven Zed  
Print Name: STEVEN ZED  
Title: Interim City Manager  
Address: 11701 Community Center Dr.  
Northglenn, CO 80233

ATTEST:

By: Diana L. Legiz  
Print Name: DIANA L. LEGIZ  
Title: City Clerk  
DATE: 12-7-06



EXHIBIT A

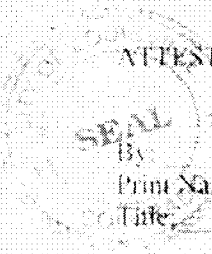
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DATE OF MOU

City of Wheat Ridge  
City of Louisville  
City of Northglenn  
City of Lafayette  
City of Golden  
Town of Superior  
Town of Erie

CITY OF LOUISVILLE

By: ~~Heather Eaker~~  
Print Name: HEATHER RASEN  
Title: ASSISTANT CITY MANAGER  
Address: 749 MAIN ST  
LOUISVILLE, CO 80027

ATTEST:

By:  Nancy Varra  
Print Name: Nancy Varra  
Title: City Clerk

DATE: 12/22/06


By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE: \_\_\_\_\_

CITY OF LAKEWOOD

By:   
Print Name: MICHAEL J. ROCH  
Title: CITY MANAGER  
Address: \_\_\_\_\_  
\_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE: \_\_\_\_\_

CITY OF THORNTON

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: \_\_\_\_\_

EXHIBIT A

INITIAL NEW MEMBER ENTITIES EXPECTED TO BE ADDED AFTER EFFECTIVE  
DATE OF MOU

City of Wheat Ridge

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City of Lafayette

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Town of Superior

Town of Erie