

**Town of Basalt
Resolution No. 01
Series of 2019**

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
AND AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT
WITH CEDAR NETWORKS CONCERNING THE DONATION AND INSTALLATION
OF SHADOW CONDUIT.**

RECITALS

- A. The Town of Basalt (the "Town") owns various rights-of-way throughout its jurisdiction;
- B. By Ordinance No. 03, Series 2019, the Town amended Chapter 11, Article III of the Basalt Municipal Code to provide for the mandatory installation of empty or shadow conduit in all excavations within Town rights-of-way;
- C. Cedar Networks proposes to donate the necessary conduit to the Town for use as provided in that ordinance such that Shadow Conduit will be installed as a Conduit Pair – one owned by the Town, and one owned by Cedar Networks;
- D. The Town and Cedar Networks have negotiated terms and conditions of such donations acceptable to both parties;
- E. For the foregoing reasons, the Board of Trustees finds and determines that the execution of a memorandum of agreement with Cedar Networks concerning the donation and installation of Shadow Conduit is in the interest of the public health, safety, and welfare of the residents of the Town of Basalt.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Basalt, Colorado as follows:

1. Recitals. The foregoing recitals are incorporated herein as findings of Town Council.
2. Approval. The Basalt Town Council hereby approves the Memorandum of Agreement by and between the Town of Basalt and Cedar Networks Concerning the Donation and Installation of Shadow Conduit, as set forth in Exhibit A, and authorizes the Mayor to execute the same.

READ AND ADOPTED on January 22, 2019, by a vote of 5 to 0.

TOWN OF BASALT, COLORADO

By: 
Jacquie R. Whitsitt, Mayor

ATTEST

By: 
Pamela K. Schilling, Clerk



Exhibit A

**xMEMORANDUM OF AGREEMENT CONCERNING THE DONATION AND
INSTALLATION OF SHADOW CONDUIT**

**BETWEEN:
THE TOWN OF BASALT, COLORADO
AND CEDAR NETWORKS**

This Memorandum of Agreement (“Agreement”) Concerning the Donation and Installation of Shadow Conduit is entered into this ___ day of _____, 2019 to outline and memorialize the Agreement terms and responsibilities between Cedar Networks (“Cedar Networks”) and the Town of Basalt, Colorado, a Colorado home rule municipal corporation (the “Town”) (Cedar Networks and the Town are hereinafter referred to collectively as the “Parties” and individually as “Party”).

RECITALS

WHEREAS, Cedar Networks is a licensed telecommunications company that builds fiber networks;

WHEREAS, the Town desires to develop the capacity for future deployment of additional telecommunications resources and to minimize disruption of the Town’s public infrastructure;

WHEREAS, Cedar Networks desires to donate conduit (“Conduit”) to the Town for deployment as empty conduit (“Shadow Conduit”) to be used in the future by telecommunications providers;

WHEREAS, the Parties desire to work cooperatively toward the donation and installation of the Shadow Conduit; and

WHEREAS, there exists the need for Cedar Networks and the Town to memorialize this Agreement concerning the donation and installation of the Shadow Conduit.

AGREEMENT

1. **EFFECTIVE DATE.** This Agreement shall become effective upon the signature of the Parties.

2. **DONATION OF CONDUIT.**

a. *Agreement to Convey.* Cedar Networks agrees to donate Conduit to the Town at no cost. Whenever the Town Manager or Public Works Director approve installation of Conduit, Cedar Networks shall donate two strands of Conduit (a “Conduit Pair”) for installation in the Town.

b. *Ownership of Shadow Conduit.* For each Conduit Pair that is donated by Cedar Networks, Cedar Networks will retain ownership of one (1) of the Conduit strands (“Cedar Networks Conduit”), and the Town will own the other Conduit strand in the Conduit Pair (“Town Conduit”).

3. INSTALLATION. Cedar Networks and the Town, through the Town Manager and/or Public Works Director, will work cooperatively to determine if installation of Conduit is appropriate. All installation of Conduit will be subject to the Town's final approval. Cedar Networks will be responsible for the locates of the Conduit installed. All installation shall be done in accordance with any and all specifications contained in the Town Manager and/or Public Works Director's final approval.

4. ORDINANCES. Nothing herein shall limit the obligations imposed on Cedar Networks by any ordinance, code or public work standard adopted by the Town.

5. CEDAR NETWORKS RIGHTS. Nothing herein conveys to Cedar Networks any franchise rights or rights of occupancy in the Town's rights-of-way. To the extent any limited occupancy rights are permitted pursuant to this Agreement, such permission may be revoked by the Town at any time with or without cause. Upon such revocation, any rights of Cedar Networks to occupy the Town's rights-of-way, including but not limited to maintenance or repair of Cedar Networks Conduit shall immediately cease. Cedar Networks agrees that it does not have or claim, and shall not at any time in the future have or claim, any ownership interest or any other interest in any property owned by the Town by virtue of this Agreement or its ownership of the Cedar Networks Conduit.

6. THIRD-PARTY INSTALLATION. Any third party may request the installation of its own conduit, and the Town Manager and/or Public Works Director shall have the sole discretion to approve or reject the third-party's installation request.

7. INSOLVENCY AND TRANSFER. The Town shall acquire full ownership interest in and right to the Cedar Networks Conduit in the event that Cedar Networks becomes insolvent. Should Cedar Networks sell all or part of its business to a qualified third party, the ownership of the Cedar Networks Conduit shall transfer to the acquiring third party. Notice of any such transfer shall be promptly provided to the Town.

8. INDEMNIFICATION. Cedar Networks shall indemnify, defend and hold harmless the Town and its elected and appointed officers, employees, agents and insurers from and against any and all claims and liabilities (including without limitation claims and liabilities related to bodily injury or property damage), directly or indirectly arising out of, resulting from or related to the Cedar Network's actions or inactions pursuant to this Agreement or the actions or inactions of the Cedar Network's agents, contractors or invitees.

9. NON-WAIVER OF GOVERNMENTAL IMMUNITY. No provision of this Agreement shall be construed as a waiver or abrogation of, or an intent to waive or abrogate, any of the monetary limitations or any other rights, immunities or protections afforded to either Party or their respective directors, officials, officers, agents, and employees, by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as it may be amended from time to time.

10. NON-APPROPRIATION. This Agreement shall not be construed as a multi-fiscal year appropriation by the Town, as all financial obligations of the Town hereunder shall be and are

conditioned upon annual appropriations by the Town in accordance with the provisions of Article X, Section 20 of the Constitution of the State of Colorado.

11. **TERMINATION.** This Agreement may be terminated by either Party without cause with 30 business days advance written notice. Upon such termination, Cedar Networks shall no longer have any rights to maintain or repair Cedar Networks Conduit or otherwise occupy Town's rights-of-way, provided that Cedar Networks shall retain the limited right to use any Cedar Networks Conduit for so long as such Conduit remains usable. The Town shall have no obligation to repair or maintain nor any liability for any damage, destruction or removal of the Cedar Networks Conduit after termination.

12. **RATIFICATION.** This Agreement is subject to ratification by the Town's Board of Trustees.

13. **ASSIGNMENT.** With the exception of the transfer of the Cedar Networks Conduit, pursuant to Paragraph 7, above, the obligations and rights hereunder are personal to Cedar Networks and the Town and shall not be transferred or assigned without the consent of the Parties. Any such transfer or assignment shall be void. Neither Party's consent shall be unreasonably withheld, conditioned, or delayed.

14. **MODIFICATION.** This Agreement may be amended from time to time by written agreement duly authorized by the parties against whom such amendment may be enforced.

15. **THIRD PARTY ENFORCEMENT.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement and do not create any rights for third parties to enforce this Agreement.

16. **NOTICES.** All notices required to be given hereunder shall be hand delivered with receipt required, or sent by certified or registered mail to such Party's representative at the address of the Party set forth below. In addition to, but not in lieu of a hard-copy notice, notice may also be sent by e-mail to the e-mail addresses set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

TOWN:
Town of Basalt
c/o Town Manager
231 N. 7th Street
Basalt, CO 81652

Ryan.Mahoney@basalt.net

CEDAR NETWORKS:
Cedar Networks
c/o Chris Stebner
Chief Business Development Officer
954 E 2nd Avenue #107
Durango, CO 81301
chris@cedarnetworks.com

17. **COUNTERPARTS.** This Agreement may be executed in multiple counterparts, which shall constitute one Agreement. This Agreement can be executed by either Party by facsimile or email transmission, which shall be binding upon the Party so executing. Original signatures shall be promptly provided to the Party so requesting

18. DISPUTE RESOLUTION. If a dispute arises relating to this Agreement, and is not resolved, the Parties shall first proceed in good faith to submit the matter to mediation. The Parties shall jointly appoint an acceptable mediator and shall share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is sent by one Party to the other at the Party's last known address. Either Party shall be free then to pursue any and all rights and remedies at law or equity. The sole venue for any action to enforce this Agreement shall be the District Court in and for Garfield County, Colorado.

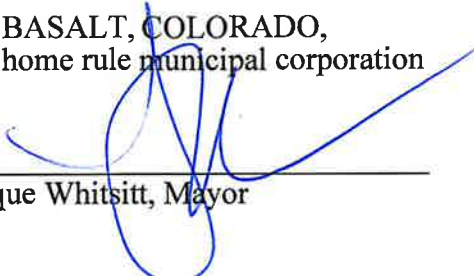
19. APPLICABLE LAW. This Agreement shall be governed in accordance with the laws of the State of Colorado.

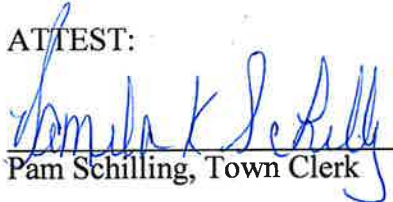
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[signatures on following pages]

ACCEPTED by the TOWN:

TOWN OF BASALT, COLORADO,
a Colorado home rule municipal corporation

By: 
Jacque Whitsitt, Mayor

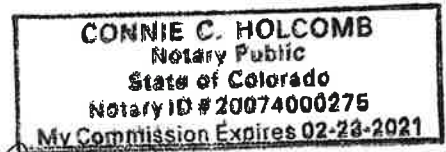
ATTEST:

Pam Schilling, Town Clerk




STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 23rd day of January, 2019, by Jacquie Whitsitt, as Mayor, and Pam Schilling, as Town Clerk, of the Town of Basalt, Colorado.

WITNESS my hand and official seal.
My commission expires 02-23-2021.




Notary Public

ACCEPTED by CEDAR NETWORKS:

CEDAR NETWORKS,
a Colorado corporation

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of
_____, 2019, by _____.

WITNESS my hand and official seal.

My commission expires _____.

Notary Public