

ORDINANCE NO. 5
Series of 2018

**AN ORDINANCE OF THE TOWN OF CARBONDALE, COLORADO REVISING
CHAPTER 11, ARTICLE 2 OF THE MUNICIPAL CODE TO ENACT AN
ADDITIONAL CONDITION THAT MAY BE IMPOSED ON THE WORK
PERFORMED UNDER A STREET EXCAVATION PERMIT IN ORDER TO
PROMOTE DEPLOYMENT OF TELECOMMUNICATION RESOURCES.**

WHEREAS, in order to meet growing demand for access to broadband services, more broadband network infrastructure will be necessary; and

WHEREAS, the installation of additional broadband infrastructure could increase the number of excavations in and disruptions to the Town's streets and rights-of-way; and

WHEREAS, the Town desires to develop the capacity for future deployment of additional telecommunications resources and simultaneously mitigate the related impacts on the Town's rights-of-way; and

WHEREAS, the Town has entered into an agreement, attached hereto as **Exhibit A**, with a licensed telecommunications company, Cedar Networks, whereby Cedar Networks will donate conduit to the Town at no cost for deployment by the Town as empty conduit ("Shadow Conduit") for future use by telecommunications providers; and

WHEREAS, the Board of Trustees seeks to revise Chapter 11, Article 2 of the Municipal Code to facilitate the deployment of Shadow Conduit by affording the Town Manager and Public Works Manager the discretion to require conduit installation as a condition of a permit issued for a street excavation; and

WHEREAS, for the foregoing reasons, the Board of Trustees finds and determines that the enactment of the regulations set forth herein is in the interest of the public health, safety, and welfare of the residents of the Town of Carbondale.

NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF CARBONDALE, COLORADO that the Town of Carbondale Municipal Code shall be amended as follows:

1. Section 11-2-40 regarding the conditions imposed on work pursuant to a street-excavation permit shall be amended by adding the language underlined to read as follows:

Sec. 11-2-40. Conditions imposed on work.

...

(a) The Town Manager or the Board of Trustees may impose the following conditions on any permit issued pursuant to this Article:

...

(7) As a condition of work performed under the permit, the Town Manager/Public Works Director may require the installation of empty shadow conduit. The Town Manager/Public Works Director has the discretion to require the installation of such conduit when a permit is issued for the following:

a. a pit, trench, hole, opening, digging or excavation across the entire paved width of a roadway;

b. a pit, trench, hole, opening, digging or excavation of 100 feet or more parallel to a roadway; or


c. any other pit, trench, hole, opening, digging or excavation that provides a similar opportunity to install shadow conduit.

A permit will not be released and/or the bond(s) or other securities will not be returned until a shape file compatible with ARC GIS noting the location(s) of the shadow conduit is provided to the Town Manager/Public Works Director. Conduit specifications must comply with the Town's Public Works Manual, as may be amended from time to time, and/or be approved by the Town Manager/Public Works Director. The minimum conduit size must be two (2) inches in diameter, and it is within the Town Manager/Public Works Director's discretion to require larger diameters.

7. This Ordinance shall be effective upon posting and publication in accordance with the Carbondale Home Rule Charter.

INTRODUCED, READ AND PASSED THIS 27th day of April, 2018.

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



Dan Richardson, Mayor

ATTEST:



Cathy Derby, Town Clerk

POSTED: _____

PUBLISHED: _____

EFFECTIVE: _____



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

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

This Memorandum of Agreement ("Agreement") Concerning the Donation and Installation of Shadow Conduit is entered into this 24th day of April, 2018 to outline and memorialize the Agreement terms and responsibilities between Cedar Networks ("Cedar Networks") and the Town of Carbondale, 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").

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Memorandum of Agreement – Shadow 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, including but not limited to the street excavation requirements in Chapter 11, Article 2 of the Town Municipal Code, as may be amended from time to time.

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. The Town may require Cedar Networks to move or remove Cedar Networks Conduit at Cedar Networks' expense if the Town determines such to be necessary to accommodate a future public infrastructure project. The Town shall have no obligation to repair or maintain nor any liability for any damage, destruction or removal of the Cedar Networks Conduit. 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 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.

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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. .

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

13. ASSIGNMENT AND MODIFICATION. 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. Neither Party's consent shall be unreasonably withheld, conditioned, or delayed.

14. 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.

15. 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 Carbondale
c/o Jay Harrington
Town Manager
511 Colorado Avenue
Carbondale, CO 81623
jharrington@carbondalecto.net

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

16. 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.

17. 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.

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18. 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]

Town of Carbondale and Cedar Networks
Memorandum of Agreement – Shadow Conduit

ACCEPTED by the TOWN:

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

By:


Dan Richardson, Mayor

ATTEST:

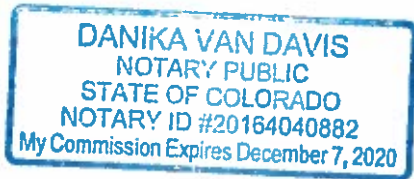

Cathy Derby, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 25th day of April, 2018, by Dan Richardson, as Mayor, and Cathy Derby, as Town Clerk, of the Town of Carbondale, Colorado.

WITNESS my hand and official seal.

My commission expires 12/07/2020




Notary Public

Town of Carbondale and Cedar Networks
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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 _____, 2018, by _____.

WITNESS my hand and official seal.

My commission expires _____.

Notary Public