

USER AGREEMENT

This USER AGREEMENT (“Agreement”) is made by and between the South Metro Fire Rescue Fire Protection District (“South Metro”) and the City of Littleton, Colorado (the “City”). South Metro and the City are sometimes collectively referred to herein as, the “Parties” or singularly as, a “Party.” This Agreement shall become effective as of the date on which it is signed by both Parties (“Effective Date”).

RECITALS

A. South Metro is a quasi-municipal corporation and political subdivision of the State of Colorado, organized pursuant to Article 1, Title 32, C.R.S.; and

B. The Metropolitan Area Communications Bureau, d/b/a MetCom (“MetCom”), is a bureau of South Metro operated to provide emergency services communications, dispatching services, and technology support for South Metro and other contracting parties; and

C. South Metro owns and MetCom operates a center for emergency services dispatching and communications located at 9195 East Mineral Avenue, Centennial, Colorado (“MetCom Dispatch Center”); and

D. The City is a home rule municipality organized and existing pursuant to Colo. Const. art. XX, § 6; and

E. The City operates a combined fire communications and dispatch center known as the Littleton Fire Rescue Communications Center (“Littleton Dispatch Center”); and

F. The City provides dispatching and communication services to the Cunningham Fire Protection District (“Cunningham”) through the Littleton Dispatch Center pursuant to that certain Agreement dated November 12, 2008 between Cunningham and the City (the “Cunningham Agreement”); and

G. The City provides fire protection and emergency medical services through the City of Littleton Fire Department to the Littleton Fire Protection District (“Littleton Fire”) and the Highlands Ranch Metropolitan District (the “Metro District”). The City’s services includes dispatching and communication services through the Littleton Dispatch Center pursuant to an Intergovernmental Agreement dated January 17, 2012 between Littleton Fire, Highlands Ranch Metropolitan District No. 1 acting on behalf of itself and on behalf of Highlands Ranch Metropolitan District Nos. 2, 3, 4, and 5, and the City. The parties amended the original Intergovernmental Agreement by an amendment dated July 15, 2014. This Agreement will refer to the Littleton Fire/Metro District Agreement, the

Cunningham Agreement and the Littleton Fire/Metro District Agreement collectively as the "Littleton Service Agreements;" and

H. The City also provides dispatching and communication services to the City of Littleton Fire Department related to its fire protection and emergency medical services provided in the City; and

I. The City no longer desires to provide fire protection and emergency medical service dispatching and communication services through the Littleton Dispatch Center; and

J. The City desires to subcontract with South Metro to provide, on behalf of the City, the dispatching and communication services to Cunningham, Littleton Fire, and the Metro District required under the Littleton Service Agreements for the remainder of 2017; and

K. Beginning in 2018, the City desires to continue contracting with South Metro to provide dispatching and communication services to the City, Littleton Fire and the Metro District (but not Cunningham), however, provision of such services to Littleton Fire and the Metro District will no longer be subject to the service standards and payment provisions of the Littleton Service Agreements; and

L. South Metro desires to provide such services to the City, Cunningham, Littleton Fire, and the Metro District on the terms and conditions set forth herein; and

M. Article XIV, Section 18(2)(a) of the Colorado Constitution and Part 2, Article 1, Title 29, C.R.S., encourage and authorize governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. Term and Termination.

(a) Term. The term of this Agreement shall commence on August 1, 2017 and expire on December 31, 2021; provided, however, that all of the Parties' obligations with respect to Cunningham pursuant to this Agreement shall expire on December 31, 2017.

(b) Early Termination. Either Party may terminate this Agreement with or without cause upon twelve (12) months' written notice to the other Party, or upon earlier written agreement between the Parties.

(c) Termination for Cause. This Agreement shall terminate for cause as provided in Section 8 below.

(d) Subject to Annual Appropriations. The obligations of the Parties contained herein are subject to annual appropriation by their respective governing bodies of sufficient funds to carry out its obligations hereunder. If either Party fails to appropriate funds for its obligations under this Agreement for a fiscal year, this Agreement shall automatically terminate on the first day of the fiscal year for which funds have not been appropriated, and the Parties shall have no further obligations or liabilities to each other under this Agreement, except for payment for services provided prior to such termination. Notwithstanding the foregoing, the Parties agree that any preliminary budget presented to their governing bodies for consideration shall include sufficient funds and appropriations to carry out the terms, duties and obligations contained herein for the subsequent fiscal year.

2. **Scope of Services.** South Metro shall provide primary emergency call handling and dispatch services to the City, Cunningham, Littleton Fire, and the Metro District through the MetCom Dispatch Center, as further described on **Exhibit A**, attached hereto and incorporated herein. The City, Cunningham, Littleton Fire, and the Metro District may each, in its sole discretion, establish specific procedures and guidelines for dispatch of fire suppression, emergency medical, and specialty units, including automatic and mutual aid.

3. **Ownership of Records and Data.** All records of South Metro related to the City, Cunningham, Littleton Fire, or the Metro District, including electronically stored data, geographic information system (“GIS”) and computer aided dispatch (“CAD”) data, and audio tapes shall be the property of South Metro, but available to the agency to which they relate. South Metro shall make copies of such records at the request of the requesting agency, and shall not dispose of any such records without the written agreement of the pertinent agency. South Metro and MetCom shall maintain its records consistent with rights and obligations under the Colorado Governmental Immunity Act and the Colorado Open Records Act.

4. **Compensation.**

(a) Amount. In consideration of the services to be performed pursuant to this Agreement, the City shall (i) pay the amounts set forth in **Exhibit B**, attached hereto and incorporated herein; and (ii) transfer title to the equipment described in **Exhibit B** to South Metro by an ordinance passed by the Littleton City Council. The City shall be liable to South Metro for making payment for the services provided to Cunningham, Littleton Fire, and the Metro District pursuant to the Littleton Service Agreements regardless of whether the City receives payment for such services.

(b) Invoices. South Metro shall provide the City with a written invoice for the amounts due and payment shall be due no later than forty-five (45) days following receipt by the City of such invoice. All invoices shall be deemed received three (3) days following deposit in the United States Postal Service first class mail, or immediately upon transmittal by email.

(c) Late Payments. Any payment required under this Agreement that is not paid when due shall accrue compound interest in the amount of one percent (1%) per month until paid.

(d) Non-payment. Any issues related to non-payment shall be addressed under Section 8 (Disputes).

5. **Integration of Communication Systems**. Unless otherwise agreed to by South Metro in writing, the City shall integrate its communication systems with the communication systems of the MetCom Dispatch Center. The City shall also cause Littleton Fire, Cunningham, and the Metro District to integrate their fire service communication systems in accordance with this Agreement. To the extent South Metro has resources and personnel available, which shall be determined in its sole discretion, South Metro will serve in a consulting and support capacity to assist the City, Cunningham, Littleton Fire, and the Metro District with the integration, implementation and ongoing operation of their communications equipment.

6. **Communications Equipment**. South Metro shall provide and maintain all equipment, hardware and software located within the MetCom Dispatch Center necessary to support uninterrupted dispatch services as described in this Agreement. The City shall provide and maintain all equipment, hardware, and software necessary to support direct connectivity to and communications with the MetCom Dispatch Center for the purpose of data integration, station alerting, paging and radio communications, including but not limited to data circuits (if needed), vehicle/handheld radios, and costs associated with utility company circuits, connections, maintenance and recurring service charges, if any. At no cost to South Metro, all fire stations must be equipped with a First-In MCU that is version and firmware compliant with the MetCom Dispatch Center's First-In Station Alerting system. The City shall use its best efforts to ensure that Cunningham (through the end of 2017), Littleton Fire and the Metro District comply with the requirements of this paragraph. **South Metro shall have no responsibility to provide the services described herein, and no liability related thereto, during any period in which the City, Cunningham, Littleton Fire, and/or the Metro District fails to fully comply with the requirements of this paragraph.**

7. **Dispatching Personnel**. All full-time dispatchers employed by the City of Littleton Fire Department on the Effective Date who are in good standing with the City will be offered full-time dispatching positions at the MetCom Dispatch Center. Such dispatchers shall not be required to submit an employment application. All dispatchers

transferred from the City to South Metro ("Transferred Dispatchers") will be employed pursuant to the Staffing Plan attached as **Exhibit C**. The last date of the Transferred Dispatchers' employment with the City shall be August 1, 2017, and the start date of the Transferred Dispatchers with South Metro shall be August 2, 2017.

8. Disputes.

(a) Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default.

(b) Dispute Resolution. The Parties agree to enter into third-party mediation prior to declaring a default and pursuing any of the remedies provided for in this section to enforce the terms of this Agreement. The mediator will be chosen by mutual agreement of the Parties. The mediator must be neutral, knowledgeable in the area of dispute and live within 100 miles of the MetCom Dispatch Center. The Parties shall equally bear all costs of such mediation.

(c) Remedies. In the event a Party declares a default by the other Party, such defaulting Party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. Provided, however, the City agrees to continue to provide consideration under Section 4 and South Metro agrees that MetCom shall continue to provide the Services pending the resolution of any dispute. The court in any such action shall award the prevailing Party its reasonable costs of litigation and reasonable attorney's fees.

(d) Special Damages. Under no circumstances shall either Party be liable to the other Party for special, punitive, indirect or consequential damages arising out of or in connection with this Agreement, including without limitation lost profits, loss of use, or loss of opportunity.

(e) Waiver. The waiver by either Party of any breach by the other of any term, covenant or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or other term, covenant, or condition.

(f) Governing Law. This Agreement shall be governed exclusively by the laws of the State of Colorado. The Parties agree that, in interpreting this Agreement, any ambiguities shall not be construed against the drafting party.

(g) Venue. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for Arapahoe County and shall be tried to the court without a jury.

9. **Miscellaneous.**

(a) Amendments. Any amendments to this Agreement shall be in writing and executed by the Parties.

(b) Compliance with all Laws. The Parties shall comply with all federal, state and local laws, rules, regulations and ordinances applicable to the performance of this Agreement.

(c) Notices. All notices which are required or which may be given under this Agreement shall be effective when delivered in person or mailed via registered or certified mail, postage prepaid and sent to the address below, unless another address is certified to the other Party:

South Metro
Attn: MetCom Director
9195 E Mineral Ave.
Centennial, CO 80112

City Manager
City of Littleton
2255 W. Berry Ave
Littleton, CO 80120

(d) Assignment. The Parties shall not assign any rights or delegate any duties under this Agreement, whether by assignment, subcontract or other means, without written approval of the non-assigning party. Any such attempted assignment or delegation without such approval shall be void and shall constitute a breach of this Agreement.

(e) Entire Agreement. This Agreement, including its Exhibits, constitutes the entire agreement between the Parties. There are no understandings or agreements between the Parties other than those set forth in this Agreement. No other statement, representation or promise has been made to induce the Parties to enter into this Agreement.

(f) Time is of the Essence. All times stated in this Agreement are of the essence.

(g) Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

(h) Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent

to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, *et seq.*, C.R.S. The Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

(i) No Third-Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person or entity except those persons or entities mentioned in this Agreement. No person or entity, other than the Parties to this Agreement, shall have any standing or other right, legal or equitable, to enforce any provision of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the dates noted below.

SOUTH METRO:

South Metro Fire Rescue Fire Protection District

By: David M. Jackson
Name: _____
Title: _____
Date: _____

Attest:

Ronda Schottay
Secretary

Approved as to Form:

[Signature]
District Legal Counsel

CITY:

City of Littleton, Colorado

By: _____
Name: _____
Date: _____

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT A

SCOPE OF SERVICES

1. Notwithstanding any other provision in this Agreement, services provided prior to January 1, 2018 shall be in accordance with the standards and requirements set forth in the Littleton Service Agreements, which the Parties incorporate herein by reference. Beginning on January 1, 2018, the services will no longer be subject to such standards and requirements.

2. South Metro will implement the Staffing Plan attached as **Exhibit C**. The Staffing Plan shall require South Metro to maintain the ability to staff up to handle high demand incidents and events, including rapid call-back of staff, when necessary.

3. South Metro will provide dispatching services for the City, Littleton Fire, and the Metro District using a map-based CAD system that also has the ability to provide station-based dispatching, in addition to Automatic Vehicle Locators (AVL) and Mobile Data Terminals (MDT). South Metro shall not have any responsibility for providing hardware, software, or any other equipment associated with AVL or MDT, or support related thereto.

4. The MetCom Dispatch Center primarily operates on the State of Colorado 800 MHz Digital Trunked Radio System. South Metro will ensure that the City, Cunningham, Littleton Fire, and the Metro District have adequate dispatch and operational talk-groups to support emergency operations.

5. South Metro will provide a nationally recognized standard of Emergency Medical Dispatch (EMD) to the citizens calling 911.

6. South Metro will provide, at its expense, all required GIS data integration and support for the street data required to dispatch for the City, Littleton Fire, and the Metro District.

7. Within thirty (30) days after the Effective Date of this Agreement, South Metro will create, at no additional charge, a redline version of a public safety map book specific to the City, Littleton Fire, and the Metro District. This redline map book will be provided in an electronic PDF format for station and apparatus use. South Metro will incorporate any modifications to the map book provided by the City in writing within sixty (60) days after receipt thereof.

8. Subject to availability, which shall be determined by South Metro in its sole discretion, South Metro will provide MetCom's Incident Dispatch Team (IDT) including

units and personnel on predefined major incidents requiring specialized logistics and communications support.

9. South Metro will not provide technical support for the City's, Littleton Fire's, or the Metro District's communication equipment, except as it relates to integration of such communication systems with the communication systems of the MetCom Dispatch Center pursuant to Section 5 of the Agreement.

10. South Metro shall ensure that the MetCom Dispatch Center meets the performance requirements of the National Fire Protection Association's (NFPA) standards for fire dispatch and the International Academy of Emergency Medical Dispatch's standards for Emergency Medical Dispatch (EMD). South Metro shall provide monthly, quarterly and annual performance reports to the City that demonstrate compliance with the stated standards. If for any reason the dispatch service levels provided by South Metro are unacceptable, the City shall notify the MetCom Director, in writing, of any deficiencies and expectations for correction. South Metro shall have thirty (30) days to respond in writing to the City about the service and its plan of action.

11. South Metro will use its best efforts to maintain good working relationships with the primary Public Safety Answering Points (PSAPs) that serve the City.

12. South Metro will address service demands in all geographic areas covered by this Agreement with the same priority and equality to ensure a consistent standard of performance and service levels.

EXHIBIT B

PRICING AND CONVEYANCE OF EQUIPMENT

1. **Dispatch Services Fee.** The dispatch services fee is based on an annualized cost per call and will be prorated based on the Effective Date of this Agreement. For purposes of calculating the dispatch services fee, a “call” is defined as an “emergent or non-emergent incident assigned a run number in the Computer Aided Dispatch (CAD) System. The City will be billed quarterly in advance for dispatch services. The amount of the fee for services provided during 2017 is \$58.46 per call and is based on a rolling three-year average of the number of calls generated by the City, Cunningham, Littleton Fire, and the Metro District calculated from July 1, 2013 through June 30, 2016. Beginning in 2018, the fee shall be recalculated annually based on a rolling three-year average of the number of calls generated by the City, Littleton Fire, and the Metro District calculated from July 1 and ending on June 30 three years later, and the updated rate shall go into effect on January 1 of the following year. The rate for 2018 prior to adjustments in call volume is \$58.46. Beginning in 2019, the City will be billed annually for a “true-up” payment that represents the adjustment in the Consumer Price Index for All Urban Consumers for the Denver-Boulder-Greeley metropolitan area (“CPI”).

By way of example, the fee for 2018 will be based on the rolling average number of calls generated by the City, Littleton Fire, and the Metro District from July 1, 2014 to June 30, 2017. The fee for 2019 will be based on the rolling average number of calls generated by the City, Littleton Fire, and the Metro District from July 1, 2015 to June 30, 2018, plus the annual payment for adjustment in the CPI. At the City’s request, South Metro shall provide all back up documentation necessary to verify the “true-up” process, and to the extent there is any disagreement between the Parties regarding the amount invoiced, the then-existing rate shall be paid until the matter is resolved.

2. **Conveyance of Equipment.** The City agrees to transfer title to the following equipment to South Metro, along with related workstation software/licenses, including without limitation licenses for TriTech CAD and Medical Priority Dispatch, and all spare radio equipment allocated to the Fire Department which is used to support the fire dispatch functions (the Parties will update the list below as needed to further describe such radio equipment):

<u>Make</u>	<u>Model</u>	<u>Part Number</u>	<u>Serial Number</u>	<u>Service Tag</u>
Motorola	MCC 7500 Elite		443CQK0406	
Motorola	MCC 7500 Elite		443CQK0407	
Motorola	MCC 7500 Elite		443CQZ0181	
Motorola	MCC 7500 Elite		433CQZ0182	
Dell	Optiplex 7010			1JD3L02
Dell	Optiplex 7010			7PQ8L02

Dell	Optiplex 7010			1JF0L02
Dell	Optiplex 7010			G8R9L02
Dell	Latitude E6440			H1L1YZ1
Dell	Latitude E6440			60L1YZ1
HP	Pro Desk 600 G1 TWR	F4K88UT#ABA	2VA4240VJ7	
HP	Pro Desk 600 G1 TWR	F4K88UT#ABA	2VA4240VJN	
HP	Pro Desk 600 G1 TWR	F4K88UT#ABA	2VA4240VL0	
HP	Pro Desk 600 G1 TWR	F4K88UT#ABA	2VA4240VHN	
HP	Pro Desk 600 G1 TWR	F4K88UT#ABA	2VA4240VKM	
HP	Pro Desk 600 G1 TWR	F4K88UT#ABA	2VA4240VJQ	
HP	Pro Desk 600 G1 TWR	F4K88UT#ABA	2VA4240VHL	

EXHIBIT C

STAFFING PLAN

1. Beginning on the first date of employment with South Metro, the Transferred Dispatchers will be compensated by South Metro at the current rates for dispatch personnel based on their certifications and time in grade while employed by the City and will be eligible for the same benefits that are offered to South Metro staff personnel. Transferred Dispatchers shall not be subject to any waiting period to participate in any benefits as an employee of South Metro. The vacation and sick leave accrual for Transferred Dispatchers shall be calculated according to years of service based on the employee's original hire date with the City ("Original Hire Date"). Any sick leave time accrued by a Transferred Dispatcher while employed by the City shall be available to such Transferred Dispatcher in his or her new position at South Metro ("Transferred Sick Leave"); provided, however, total sick leave which includes Transferred Sick Leave and accrued sick leave shall not exceed 720 hours. Unused Transferred Sick Leave will not be paid out upon a Transferred Dispatcher's termination of employment with South Metro. Transferred Sick Leave is not eligible for annual buy out or to be used in sick leave donation.

2. Transferred Dispatchers will be classified by South Metro as "Uniformed Administrative Personnel" and will not have a rank or wear collar brass.

3. Employment with South Metro is "at will." Like other at-will employees of South Metro, a Transferred Dispatcher may be terminated, with or without cause, statement of reasons, hearing, or appeal, just as any employee may resign at any time, with or without reason. Nothing in this Agreement is intended to modify South Metro's at-will employment policy or represent a personal contract or agreement for employment.

4. South Metro reserves the right to amend, modify or terminate any employee benefit plan or employment policy from time to time.

5. The seniority of a Transferred Dispatcher will be based on the date on which he or she became a full-time dispatcher with the City. The Transferred Dispatchers shall enjoy the same rights of seniority as current dispatchers at South Metro, and current dispatchers at South Metro shall not have seniority preferences over the Transferred Dispatchers.

6. Prior to the date on which a Transferred Dispatcher commences employment with South Metro, South Metro shall have no responsibility or liability for (a) payment of costs related to the employment of such dispatcher including, without limitation, compensation, health insurance, worker's compensation insurance,

unemployment compensation insurance, benefits, and overhead; and (b) the acts or omissions of such dispatcher. The City shall compensate each Transferred Dispatcher by check for all unused but otherwise earned, vested and determinable vacation time pursuant to the City's standard policies for separating employees. The City shall remain responsible for any acts or omissions of the Transferred Dispatchers prior to the first date of employment with South Metro.

7. Beginning on the first date that the Transferred Dispatchers become employed by South Metro, South Metro shall (a) pay all costs related to employment pursuant to South Metro's then-current standard policies including, without limitation, compensation, health insurance, workers' compensation insurance, unemployment compensation insurance, benefits, and overhead; and (b) all liability for the acts and omissions of the Transferred Dispatchers. Thereafter, each Transferred Dispatcher will accrue vacation and sick leave pursuant to the standard policies for all employees subject to the Original Hire Date. South Metro will honor requests by Transferred Dispatchers to take compensated or uncompensated vacation leave for vacation plans made prior to the date of this Agreement, as staffing and scheduling needs of South Metro allow, which shall be determined by South Metro in its sole discretion.

8. To accommodate the Staffing Plan, sleep rooms are located on-site and IDT dispatchers are available for on-call support in the field or in the MetCom Dispatch Center for major or complex incidents. South Metro will make scheduling modifications or increase staffing levels if necessary to insure the highest quality in Fire/EMS call management and customer service.

9. For those Transferred Dispatchers who have taken loan advances on pension plan funds or other funds and arranged to have periodic payroll deductions for loan repayment, South Metro shall continue the specified payroll deductions and honor the repayment agreements previously made by the Transferred Dispatchers through the City.

10. For those Transferred Dispatchers who have made non-vested contributions to a pension plan with the City, the City will amend the pension plan to allow those contributions to vest prior to the first date of employment with South Metro. Those Transferred Dispatchers with a positive balance in the City's Flexible Spending Account may continue their Flexible Spending Accounts by making the required payments to the City under COBRA and their monthly election in order to be able to maintain their flex benefits. To the extent permitted by law and contract, the Parties shall work together to effectuate the rollover of pension contributions and Flexible Spending Accounts in a manner that minimizes any negative financial impacts or tax consequences to Transferred Dispatchers.