

## **USER AGREEMENT**

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

### **RECITALS**

A. South Metro, Littleton Fire, and the Metro District are quasi-municipal corporations and political subdivisions of the State of Colorado, each 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, Littleton Fire and the Metro District have established a partnership for the provision of fire protection and emergency medical services within their respective jurisdictions through Littleton Fire Rescue, which is operated by the City, including emergency dispatching and communication services through the Littleton Dispatch Center. The partnership between the City, Littleton Fire and the Metro District is set forth in an Intergovernmental Agreement dated June 21, 2000 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 “IGA”). The parties amended the IGA by amendments dated May 2, 2002 and June 7, 2005 (“Amendments”). Further, on January 17, 2012 and July 2014, the parties amended and



(d) Subject to Annual Appropriations. The obligations of each Party contained herein are subject to annual appropriation by each Party's respective governing body of sufficient funds to carry out its obligations hereunder. If any Party fails to appropriate funds for its obligations under this Agreement for a fiscal year, this Agreement shall automatically terminate with respect to such non-appropriating Party on the first day of the fiscal year for which funds have not been appropriated, and the remaining Parties to the Agreement and the non-appropriating Party 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 Users, through the MetCom Dispatch Center, as further described on **Exhibit A**, attached hereto and incorporated herein. Each User may, in its sole discretion, establish specific procedures and guidelines for dispatch of fire suppression, emergency medical and specialty units, including automatic and mutual aid to such User.

3. **Ownership of Records and Data.** All records of MetCom and South Metro related to the Users, 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 respective User to which the records relate. South Metro shall make copies of such records at the request and cost of the requesting User and shall not dispose of any such records related to a User without the written agreement of such User.

4. **Compensation.**

(a) Amount. In consideration of the services to be performed pursuant to this Agreement, (i) the Users shall each pay the amounts set forth in **Exhibit B**, attached hereto and incorporated herein and charged to that User; and (ii) the City shall transfer title to the equipment described in **Exhibit B** to South Metro in accordance with the provisions of the Littleton City Charter.

(b) Invoices. South Metro shall provide each User with a written invoice for the amounts due for such User and payment shall be due no later than forty-five (45) days following receipt by the User 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. Each User shall be responsible for their respective invoice and shall make payment directly to South Metro. All charges for services shall be deemed a responsibility of the respective User and all payments from the Users to South Metro shall be deemed to be revenues of South Metro, not the City.

(c) Late Payments. Any undisputed payment required under this Agreement that is not paid when due shall accrue interest in the amount of eight percent (8%) per annum until paid.

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

(e) Prorated Refund Following Termination. If, prior to the end of its Term, this Agreement is terminated with respect to a Party, then such terminated Party shall only be responsible for payment of its User fees prorated up to and including the termination date. Within 30 days following the termination date, South Metro shall remit to the terminated Party any excess funds paid by the terminated Party.

5. **Integration of Communication Systems**. Unless otherwise agreed to by South Metro in writing, the Users shall integrate their communication systems with the communication systems of the MetCom Dispatch Center. 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 Users 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 called for 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, the City shall equip all fire stations with a First-In MCU that is version and firmware compliant with the MetCom Dispatch Center's First-In Station Alerting system. South Metro shall have no responsibility to provide some or all of the services described in this Agreement during any period that its failure to provide such service or services is the result of the City's failure to comply with one or more of the requirements of this paragraph. South Metro shall immediately notify Littleton Fire and the Metro District in writing if at any time South Metro is unable to provide one or more of its services as a result of the City's failure to comply with one or more of the requirements in this paragraph.

7. **Dispatching Personnel**. South Metro will offer dispatching positions at the MetCom Dispatch Center to up to six full-time dispatchers who are currently employed by the City on the Effective Date and who are in good standing with the City. This offer will be conditioned on the City dispatchers who desire to be considered for the positions submitting an employment application and successfully passing all hiring requirements of South Metro. Any dispatchers transferred from the City to South Metro

pursuant to this Section 7 (“Transferred Dispatchers”) will be employed pursuant to the Staffing Plan attached as **Exhibit C**.

## **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 any Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default by any other Party.

(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 participating in the mediation shall equally bear all costs of such mediation.

(c) Remedies. In the event a Party declares a default by another 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 non-defaulting Parties may elect to (a) terminate the Agreement and seek damages from the defaulting Party; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. The court in any such action shall award the prevailing Party or Parties their reasonable costs of litigation and reasonable attorneys’ fees.

(d) Special Damages. Under no circumstances shall any Party be liable to any 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 any Party of any breach by any other Party 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.

(g) Jurisdiction and Venue. Jurisdiction and 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. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

(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 given in person, by over-night courier or mailed via registered or certified mail, postage prepaid and sent to the addresses below, unless another address is certified to the other Parties:

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

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

Highlands Ranch Metropolitan District  
Attn: General Manager  
62 West Plaza Dr.  
Highlands Ranch, CO 80129

Littleton Fire Protection District  
Attn: District Manager  
5890 South Bemis Street, Suite 101  
Littleton, CO 80128

If given by hand-delivery or overnight courier, notice shall be deemed given when received. If given by mail, notice shall be deemed given 72 hours after being deposited in the mail.

(d) Assignment. No Party shall assign any rights or delegate any duties under this Agreement, whether by assignment, subcontract or other means, without written approval of the non-assigning Parties. 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. Unless otherwise expressly stated, all references to days are to calendar days.

(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 four 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 not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

(j) Governmental Immunity. This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties, and their council persons, directors, officers and employees, under federal or state law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

(k) Disclaimer. Each Party disclaims responsibility and liability for the contractual obligations of the other Parties to this Agreement.

**[Signature Pages Follow]**

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: \_\_\_\_\_

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

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

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Secretary

**Approved as to Form:**

\_\_\_\_\_  
South Metro Legal Counsel

**CITY:**

City of Littleton, Colorado

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

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

Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
City Clerk

**Approved as to Form:**

\_\_\_\_\_  
City Attorney



**METRO DISTRICT:**

Highlands Ranch Metropolitan District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Secretary

**Approved as to Form:**

\_\_\_\_\_  
Metro District Legal Counsel

**LITTLETON FIRE:**

Littleton Fire Protection District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
Secretary

**Approved as to Form:**

\_\_\_\_\_  
Littleton Fire Legal Counsel

**EXHIBIT A**  
**SCOPE OF SERVICES**

1. 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.

2. South Metro will provide dispatching services for the Users 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.

3. The MetCom Dispatch Center primarily operates on the State of Colorado 800 MHz Digital Trunked Radio System. South Metro will ensure that the Users have adequate dispatch and operational talk-groups to support emergency operations.

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

5. South Metro will provide, at its expense, all required GIS data integration and support for the street data required to dispatch for the Users.

6. Within thirty (30) days after the Effective Date of this Agreement, South Metro will create, at no additional charge, a redline of a public safety map book specific to the Users. 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 any User in writing within sixty (60) days after receipt thereof.

7. 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.

8. South Metro will not provide technical support for the Users' 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.

9. 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) at all times during the Term. South Metro shall provide monthly, quarterly and annual performance reports to the Users that demonstrate compliance with the stated standards. If for any reason the dispatch service levels provided by South Metro are unacceptable, the Users 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 Users about the service and its plan of action.

10. South Metro will use its best efforts to maintain good working relationships with the primary PSAPs that serve the City.

## **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. Each User will be billed quarterly in advance for dispatch services provided to such User, except that the City’s invoices shall include all calls provided to the City, Lockheed, and Meadowbrook. The amount of the fee for services provided during 2018 is \$58.46 per call and is based on a rolling three-year average of the number of calls generated by the Users calculated from July 1, 2014 through June 30, 2017. Beginning in 2019, the fee for each User shall be recalculated annually based on a rolling three-year average of the number of calls generated by such User 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. Beginning in 2019, the Users 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, each User’s fee for 2019 will be based on the rolling average number of calls generated by such User from July 1, 2015 to June 30, 2018, plus the annual payment for adjustment of CPI. Each User’s fee for 2020 will be based on the rolling average number of calls generated by each User from July 1, 2016 to June 30, 2019, plus the annual payment for adjustment in the CPI. At the request of any User, South Metro shall provide such User with all back up documentation necessary to verify the “true-up” process, and to the extent there is any disagreement between South Metro and any User regarding the amount invoiced, the then-existing rate shall be paid until the matter is resolved.

2. **Conveyance of Equipment.** Within sixty (60) days after the Effective Date of this Agreement, 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):

<b><u>Make</u></b>	<b><u>Model</u></b>	<b><u>Part Number</u></b>	<b><u>Serial Number</u></b>	<b><u>Service Tag</u></b>
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 imposed by South Metro 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 consider requests by Transferred Dispatchers to take uncompensated vacation leave for vacation plans made prior to the date of this Agreement, and such requests will be approved if the 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, to the extent such deductions and repayments are permitted by the Internal Revenue Code of 1986 and do not result in any negative tax consequences to the Pension Plans of the Parties.

10. To the extent permitted by law, 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 to Transferred Dispatchers to the extent such rollover is permitted by the Internal Revenue Code of 1986 and does not result in any negative tax consequences to the Benefit Plans of the Parties.