

AMENDED AND RESTATED
CAD-TO-CAD EXCHANGE SYSTEM AGREEMENT

This *Amended And Restated CAD-to-CAD Exchange System Agreement* (“**Agreement**”) is entered into by and between the Cities of Thornton and Westminster, the City and County of Broomfield, and the Adams County Communications Center Authority, formerly operating as Adams County Communications Center, Inc. (“**ADCOM**”), which are collectively referred to herein as the “**Parties**” and individually as a “**Party**”.

RECITALS

WHEREAS, the Cities of Thornton and Westminster are home rule municipal corporations. The City and County of Broomfield and ADCOM are political subdivisions of the State of Colorado;

WHEREAS, each Party operates an emergency services dispatching center, which utilizes a computer assisted dispatch system (“**CAD System**”) to receive, process and dispatch information regarding emergency incidents to the appropriate fire, emergency medical, and/or law enforcement agencies;

WHEREAS, on February 27, 2018, the Parties entered into a CAD-to-CAD Exchange System Agreement (“**Establishing Agreement**”) that provided for the Parties’ joint purchase, funding, and initial operation of a third-party hosted system that enables each Party’s CAD System to seamlessly link with the CAD System of every other Party to create a “real time” dispatch and information sharing system between the Parties’ dispatch centers and their emergency response personnel (“**CAD-to-CAD System**”);

WHEREAS, the Parties have purchased and connected to the CAD-to-CAD System; and,

WHEREAS, the Parties wish to update and amend the Establishing Agreement to remove provisions that are no longer relevant, amend existing provisions, and add new provisions that will better define the Parties’ rights and obligations in their joint use of the CAD-to-CAD System going forward.

NOW THEREFORE, for the mutual promises and agreements set forth herein, the Parties agree as follows:

AGREEMENT

1. Governing Board.

a. *Establishment; Composition.* There is hereby established a governing Board, which shall be comprised of two representatives appointed by each Party (“**Board Representative(s)**”). Each Party also may designate one or two individuals to serve as a Board Representative when one or both of its Board Representatives are unavailable or unable to serve (“**Alternate Representative(s)**”). A Party may change its Board Representatives and/or Alternate

Representatives at any time in its sole discretion. In addition, any Party may designate a proxy to serve in place of a Board Representative if one or both Board Representatives and their Alternate Representatives are unavailable. No Party may represent or vote as a proxy to another Party that is absent from a meeting. The term “Board Representative” shall include Alternate Representatives and proxies, unless expressly stated otherwise.

b. *Purposes.* The purposes of the Board are to: i) facilitate the Parties’ payment of the ongoing costs of operating, maintaining, repairing, upgrading, replacing components or modules, expanding, providing Support Services (defined below), or other costs of the CAD-to-CAD System, excluding costs incurred by a Party in maintaining, upgrading or replacing its own systems and equipment required to connect to the CAD-to-CAD-System (collectively, the “**System Costs**”); ii) determine whether additional governmental emergency services Public Safety Access Point agencies or similar form of entity that performs emergency dispatch services (collectively, “**PSAP**”) should become contracting parties to this Agreement; iii) determine the operational, maintenance, repair, upgrade, replacement of components or modules, expansion or other aspects of the CAD-to-CAD System that shall be provided and the scope of such functions or activities (collectively, the “**System Functions**”); and, iv) establish and implement administrative and operational policies and procedures for the System Functions. The Board may establish, add to, modify, or eliminate some or all of the administrative and operational policies and procedures at any time in its sole discretion. Without limiting the foregoing, the Board may require the Parties and, if applicable, their Party Affiliate(s) (defined below), to provide in a timely manner non-confidential call response data that will assist the Board and the Parties in calculating contributions and analyzing system performance and equity in resource sharing.

c. *Meetings.*

i. The Board’s annual, special, and emergency meetings will be open to the public and subject to the Colorado Sunshine Law, Part 4 of Article 6 of Title 24 of the Colorado Revised Statutes, as may be amended from time to time (“**Sunshine Law**”). Except for the annual meeting, all other Board meetings shall constitute special meetings that are duly noticed and held as the Board deems necessary or appropriate for the conduct of its business. The Board may establish such policies and procedures as are necessary or appropriate to comply with the Sunshine Law.

ii. Board meetings may be conducted at a physical location, by an electronic platform (i.e., telephone, audio/video, etc.), or a combination thereof. The Board shall determine when meetings shall be held and whether a given meeting will be held by an electronic platform, a physical location, or a combination thereof. The Board shall determine the physical location (if any) where a given meeting will occur.

d. *Officers and Other Positions.* The Board shall elect a Chair and Vice-Chair, and may elect such other officers, if any, as it deems appropriate. A Board Representative shall serve in an officer position until the Board elects a different officer. A Board Representative may resign at any time and the vacancy shall be filled by the Board. The Board also may from time-to-time establish one or more other positions, or eliminate such position(s).

e. *Quorum; Voting.* A “**quorum**” means more than 50% of the Board Representatives of the then-contracting Parties that are present at a meeting, either in person, by telephone or other electronic media where all participants can hear and be heard by each other. A Board Representative that abstains from a vote shall still be counted for purposes of determining if a quorum is present. A quorum is determined by counting one Board Representative for each Party, regardless whether a Party may have two Board Representatives present at a meeting. Further, regardless whether a Party may have two Board Representatives present at a meeting, each Party shall have only one vote on all matters that come before the Board. Except for an emergency meeting, the Board will only take action when a quorum is present at a meeting. Except where a Super Majority vote is expressly required, actions by the Board require a simple majority vote of the voting Board Representatives participating in the meeting where a quorum is present. A “**Super Majority**” means 66% of the voting Board Representatives participating in the meeting where a quorum is present. The Board may, in its discretion, limit participation in meetings to one Board Representative in order to promote efficiency in conducting meetings.

f. *Committees.* The Board may establish one or more committees to assist the Board in performing its functions. The Parties hereby establish an Operations Committee to develop administrative or operational policies and procedures for the System Functions to be recommended to the Board. The Board may from time-to-time delegate to the Operations Committee such rule making authority as it deems appropriate for the efficient and effective operation of the CAD-to-CAD System. The Operations Committee also may make budgetary, long term planning goals, and operations recommendations to the Board. The Board may establish, add to, modify or eliminate any committee, including the Operations Committee, at any time in its sole discretion.

2. **System Functions.** The Board shall, through a simple affirmative majority vote, determine the System Functions, including any modification to or elimination of any System Function, except that any expansion of the CAD-to-CAD System shall be approved by an affirmative Super Majority vote.

3. **Funding.** Each year the Board shall develop and adopt a budget that sets forth the funds and expenditures necessary or appropriate to support the System Functions and fund the System Costs during the upcoming year, including any funding needed to establish or replenish one or more capital or reserve funds. The Board may add or eliminate any capital or reserve fund at any time in the Board’s sole discretion. The Board also shall determine the contribution of each Party for the upcoming year, using such formula(s) or methodology(ies) as the Board deems fair and equitable to the Parties. Each Party’s Board Representatives are responsible for providing a copy of the adopted budget to their governing body. The Board shall from time-to-time establish how each Party’s annual contribution shall be paid. The Board may establish a special contribution at any time if unanticipated extenuating circumstances occur during the course of a calendar year, which extenuating circumstances must be addressed immediately and cannot wait for the annual budgeting and collection of contributions from the Parties.

4. **Nonappropriation.** In accordance with State and local law, each Party’s financial obligations under this Agreement are expressly subject to annual budgeting and appropriation of funds by a Party’s governing body. If a Party’s governing body does not appropriate funds to meet that Party’s financial obligations for an ensuing calendar year, this Agreement shall automatically

terminate with respect to that Party as of December 31 of the year in which the nonappropriation occurred, without any obligation of or liability to that Party beyond any appropriated funds it has remaining for the calendar year in which the nonappropriation occurred. The Parties acknowledge and agree that: a) the Parties do not by this Agreement irrevocably pledge present cash reserves for payments in future calendar years; and, b) this Agreement is not intended to, and does not, create a multiple-fiscal year direct or indirect debt or financial obligation of any Party.

5. **Support Services.** The Parties recognize that efficient and effective performance of the CAD-to-CAD System will require administrative and operational services, and may require the services of consultants, such as legal counsel and technical experts, and other support services (collectively, “***Support Services***”), and that the nature, scope, and number of the Support Services may change from time-to-time. The following specific Support Services will or may be needed or deemed appropriate now or in the future; however, identifying and describing the following Support Services in no manner requires the Board to provide any of such Support Services and in no manner limits the Board from identifying and providing additional Support Services from time-to-time, in the Board’s sole discretion. The Board shall determine how the costs incurred for Support Services shall be allocated. The Support Services also may be provided by one or more PSAPs, or a fire agency or a law enforcement agency that is a member of a Party (collectively “***Party Affiliate(s)***”).

The designation of one or more Parties or their Party Affiliate(s) to provide one or more Support Services shall only be effective upon the affirmative majority vote of the Board and the written consent of the Board Representative(s) of the Party(ies) or Party Affiliate(s) that is/are being designated to provide the Support Services.

a. *Staff.* The Board may from time-to-time designate one or more Parties or Party Affiliates to employ Staff. A Party or Party Affiliate employing one or more of the Staff shall be responsible for:

i. Ensuring the employee(s) is/are correctly classified and compensated under the federal Fair Labor Standards Act;

ii. Compensating the employee(s), and providing benefits, in accordance with the applicable rate schedules and benefits as determined from time-to-time by that Party or Party Affiliate;

iii. Provide workers compensation and unemployment compensation insurance coverage, tax withholding and payroll deductions, and all other relevant human resource functions as are provided to other comparable employees of that Party or Party Affiliate; and,

b. *Information Technology.* The Board may from time-to-time designate one or more Party or Party Affiliate to provide information technology services in connection with the CAD-to-CAD System;

c. *Fiscal Agent.* The Board may from time-to-time designate a Party or Party Affiliate to serve as the fiscal agent, which shall be responsible for the oversight of all, and may provide

one or more of, the financial functions or services that are necessary or appropriate for the efficient and effective operation and administration of the CAD-to-CAD System (“**Fiscal Agent**”). The Fiscal Agent shall implement the procedure established by the Board for invoicing and receiving contributions from the Parties; and,

d. *Office Space*. The Parties may from time-to-time designate one or more Party or Party Affiliate to provide office space for Staff on behalf of the Parties.

6. **Additional Parties**. Any PSAP and/or other Dispatch Center located within, or outside of, the North Central Region (which is comprised of the Counties of Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, and Jefferson) (“**Agency**”) may become a contracting party to this Agreement, if:

a. The Board determines that the Agency should pay, and the Agency agrees to pay, a proportionate share of the funds previously expended for establishing, maintaining, repairing, or upgrading the CAD-to-CAD System or previously incurred System Costs, or a portion thereof;

b. The Agency agrees to pay its proportionate share of the on-going System Costs from the effective date of its becoming a contracting Party; and,

c. Adding the Agency as a contracting Party to this Agreement will not adversely affect the functioning of the CAD-to-CAD System or cause the then-existing Parties to incur an increase in their proportionate share of the annual System Costs.

The Board shall be responsible for determining whether the foregoing criteria, and any other criteria the Board deems applicable, have been met. If the Board believes that the criteria has been met, it may, by an affirmative Super Majority vote, approve the Agency becoming a Party to this Agreement. Upon the Board’s approval, the Agency shall sign a written document agreeing to become a Party to this Agreement and which, at a minimum, shall state: i) the effective date of such joinder; ii) the location where notices or other communications shall be sent; iii) the Agency’s agreement to comply with or fulfil any conditions imposed by the Board; and iv) that the Agency shall be subject to all of the terms and conditions of this Agreement as if the Agency had been an original contracting Party to this Agreement. The written document shall be in substantially the form attached to this Agreement as **Attachment A**. Upon the Agency’s execution of such document, the document shall constitute a valid and binding amendment to this Agreement with no further action being required by the Board or the then-contracting Parties.

7. **Equitable Provision and Use of Resources**. The purpose of the CAD-to-CAD System is to enhance the timely provision of appropriate emergency services to the communities and areas served by the Parties. The Parties recognize and agree that this purpose can only be achieved if neighboring Parties are able and willing to provide comparable personnel and equipment when responding into a neighboring Party’s jurisdiction through implementation of the CAD-to-CAD System. All Parties shall use their best good faith efforts to provide comparable personnel and equipment when responding into a neighboring Party’s jurisdiction.

8. **Term and Termination.**

a. *Term.* This Agreement will be in effect for the balance of the calendar year in which it becomes effective. It will automatically renew on the first day of each year for consecutive one-year terms without further action by the Board or the Parties.

b. *Termination by the Parties.* The then-contracting Parties may terminate this Agreement at any time upon the affirmative vote of all of the then-contracting Parties, or all of the then-contracting Parties except one Party. Upon termination of this Agreement, any remaining funds that have been contributed by a then-contracting Party shall be promptly remitted to that Party. Those Parties that are providing Support Services shall promptly take all necessary or appropriate actions to terminate their Support Services by the termination date, or as soon thereafter as possible and submit any final invoices to the Fiscal Agent or the Board, as then applicable. Any remaining funds shall be divided equally among the then-contracting Parties.

c. *Termination Due to Non-Payment.* The Board may terminate the right of a Party to access the CAD-to-CAD System upon non-payment of annual or special contributions established by the Board from time-to-time, unless the Party pays the full outstanding amount within 30 days of receiving notice of its non-payment. Upon such termination, the Party must sever its connection to the CAD-to-CAD System immediately. The Party also shall pay all System Costs that it owes. If the Party fails to pay all outstanding System Costs within 30 days of its termination from this Agreement, 8% interest shall accrue on the unpaid amount until it is paid in full.

d. *Termination for Breach.* The Board may terminate a Party for breaching this Agreement. The Board shall, by an affirmative Super Majority vote, determine if a breach has occurred and, if so, shall provide the breaching Party with written notice of the breach. The breaching Party shall have 30 calendar days to cure the breach. If the breaching Party fails to cure the breach within the 30 days period, the Board, by a simple majority vote, may terminate the breaching Party's participation in this Agreement. If that occurs, the breaching Party shall not be entitled to any funds it has contributed for the payment of System Costs prior to the date of termination.

e. *Termination by Party.* Any Party may terminate its participation in this Agreement, and its right to access the CAD-to-CAD System, upon providing notice of such termination and withdrawal from this Agreement to all other Parties, which Notice must be given at least 12 months prior to the intended date of termination. The terminating Party shall be obligated to pay its proportional share of the System Costs through the intended date of termination. Any Party that has terminated and then desires to re-enter this Agreement and thereby resume using the CAD-to-CAD System shall, prior to resuming such use, be required to pay a "re-entry" fee in an amount determined by the Board to help offset the System Costs incurred by the other Parties during the time that the re-entering Party was not a Party to this Agreement.

9. **Independent Participating Agencies.** The Parties agree that they are independent of one another, and that each Party's agents or employees are not, nor shall they be deemed to be, agents or employees of the other Parties for any purpose. The Parties shall have no authorization, express or implied, to bind each other to any agreement, liability, or understanding.

10. **Confidential and Private Information.** Some of the shared information may be protected from disclosure by the Health Insurance Portability and Accountability Act of 1996 and related regulations (“*HIPAA*”) or other State or federal laws or regulations. Each Party shall be responsible for determining whether information it sends or receives pursuant to this Agreement is confidential or private in nature, and each Party shall adopt its own protocols for maintaining the confidentiality of information shared pursuant to this Agreement.

11. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be given by certified mail, return receipt requested, or hand delivery to the other then-contracting Parties at their address as stated below or in any amendment to this Agreement. Notice shall be deemed given upon hand delivery or depositing it in the mail.

Adams County Communications
Center Authority
Attn: Executive Director
7321 Birch Street
Commerce City, CO 80022

City of Thornton
Attn: Fire Chief
9500 Civic Center Drive
Thornton, CO 80229

City of Westminster
Attn: Fire Chief
4800 W. 92nd Avenue
Westminster, CO 80031

City and County of Broomfield
Attn: Police Chief
Seven DesCombes Drive
Broomfield, CO 80020

12. **Effective Date.** The “*Effective Date*” of this Agreement shall be the date the last Party signs this Agreement.

13. **Dispute Resolution.** Any dispute or claim arising under or relating to this Agreement shall be submitted first to the Board for possible resolution. If the Board is unable to resolve the dispute or claim, or if one or more of the Parties to the dispute or claim are not satisfied with the Board's proposed resolution, the dispute or claim shall be submitted to non-binding mediation. The Parties to the dispute or claim shall share equally the cost of the mediation, provided that each Party shall pay its own attorneys' fees, costs and expenses incurred in preparing for and participating in the mediation. If the Parties are unable to resolve their dispute or claim through mediation, any Party to the dispute or claim may bring a civil action in the District Court for Adams County. Each Party waives its right to a jury trial. The Court shall make a determination as to the prevailing party and shall award the prevailing party its reasonable attorneys' fees, costs and expenses incurred in the civil action.

14. **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 past and present councilmembers, directors, officers, employees and volunteers, under federal or State law, including but not limited to the Colorado Governmental Immunity Act, Section 24-10-101, C.R.S., *et seq.*, as may be amended.

15. **Establishing Agreement Superseded.** As of the Effective Date, this Agreement supersedes the Establishing Agreement for all purposes and the Establishing Agreement shall be deemed null and void as of the Effective Date.

16. **Changing Definitional Names.** In order to reflect changes in naming conventions over time, the Board may change the name of one or more defined terms, provided that such name change does not in any manner change the definition of such term(s).

17. **Additional Provisions.** This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations or agreements, either written or oral relating to the subject matter herein. This Agreement shall be subject to the laws of the State of Colorado. Jurisdiction and venue shall lie exclusively in the Adams County District Court. Except for an amendment adding a new Party, this Agreement may only be amended by a document signed by the then-contracting Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. The Parties do not intend, and nothing in this Agreement shall be construed, to provide any rights or benefits to any individual or entity that is not a contracting Party to this Agreement. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement is not assignable by any Party and no Party may assign or transfer its right to connectivity or use of the CAD-to-CAD System to another person or entity without the prior written consent of the other then-contracting Parties. This Agreement may be executed in several counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one valid, binding instrument.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

CITY OF THORNTON, COLORADO

Kevin S. Woods, City Manager

Date

ATTEST:

Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:

Luis A. Corchado, City Attorney

THE CITY AND COUNTY OF BROOMFIELD, COLORADO

Mayor

Date

ATTEST:

City and County Clerk

APPROVED AS TO FORM:

City and County Attorney

CITY OF WESTMINSTER

By: _____

Date: _____

ADAMS COUNTY COMMUNICATIONS CENTER AUTHORITY

By: _____

Date: _____

Attachment A

AGENCY AGREEMENT (Amended And Restated CAD-To-CAD Exchange System Agreement)

1. Name of Organization: _____ (“Agency”).
2. The Agency’s joinder as a contracting party to the Agreement shall be effective: _____ (“Effective Date”).
3. The Agency has received a copy of the *Amended And Restated CAD-to-CAD Exchange System Agreement*, with an effective date of _____, and all amendments thereto (collectively, the “**Agreement**”) and, fully understanding the rights, requirements and obligations set forth in the Agreement, hereby agrees to be bound by all of the terms and conditions of the Agreement as if the Agency was an original contracting Party to the Agreement. All capitalized terms not defined herein shall be defined as set forth in the Agreement.
4. The Agency agrees to pay a proportionate share of the funds previously expended for establishing, maintaining, repairing, or upgrading the CAD-to-CAD System or previously incurred System Costs, or a portion thereof, in the amount of \$_____.
5. The Agency agrees to pay its proportionate share of the on-going System Costs from the Effective Date of it becoming a contracting party to the Agreement.
6. The Agency agrees to comply with or fulfil the following conditions imposed by the Governing Board as a condition of the Agency becoming a contracting party to the Agreement:
 - a. _____
 - b. _____
 - c. _____
7. All notices and other communications shall be sent to the Agency at the location set forth below or such other location as the Agency may designate from time-to-time in accordance with the “Notices” provision set forth in the Agreement:

8. The Agency understands and agrees that, upon the Agency’s execution of this Agreement, this document shall constitute a valid and binding amendment to the Agreement with no further action being required by the Governing Board, the contracting Parties to the Agreement, or the Agency.

The Agency represents and warrants that the individual(s) signing this document are authorized by the Agency to take such action. This document may be executed by original handwriting, facsimile or electronic pdf, any of which shall constitute a valid and binding instrument.

By: _____ Attested: _____
Signature Signature

Printed Name: _____ Printed Name: _____

Date: _____ Date: _____