

RESOLUTION 2018-032
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT CONCERNING THE
NORTHERN COLORADO REGIONAL COMMUNICATION NETWORK

WHEREAS, the City has been a party to an intergovernmental agreement (“IGA”) concerning the Northern Colorado Regional Communication Network (“NCRCN”) since December of 1999; and

WHEREAS, the purpose of the NCRCN is to provide a means for the member agencies to economically combine resources and provide an interoperable public safety radio system for the citizens of Larimer County communities; and

WHEREAS, the IGA concerning the NCRCN was last updated in 2009, and over the last several years the NCRCN board has been working on establishing a new NCRCN structure and partnership; and

WHEREAS, the City, the City of Loveland and Larimer County (“Partner Agencies”) desire to enter into an updated IGA in substantially the form attached as Exhibit “A” (the “NCRCN IGA”), to reflect these structure and partnership changes, to set forth each entities’ responsibilities, and to govern the funding for and the operation and use of the radio system; and

WHEREAS, the proposed NCRCN IGA includes a way for other governmental agencies to continue to contribute financially to assist in the maintenance and any future upgrades at the City-owned radio sites through the execution of separate intergovernmental agreements with the Partner Agencies; and

WHEREAS, Part 2 of Article 1 of Title 29, C.R.S. authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each, including authority to provide for the joint exercise of such functions, services or facilities; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, under Section 1-22 of the City Code, intergovernmental agreements and other cooperative arrangements between the City and other governmental entities are to be submitted to the City Council for review, unless they fit within one of the exceptions that permit execution by the City Manager; and

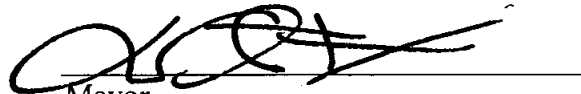
WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the NCRCN IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

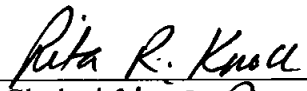
Section 2. That the City Manager is hereby authorized to execute the NCRCN IGA in substantially the same form as shown on Exhibit "A", attached hereto and incorporated herein by this reference, with such modifications and additional terms as the City Manager, in consultation with the City Attorney, determines is necessary and appropriate to protect the interests of the City.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 3rd day of April, A.D. 2018.



Mayor

ATTEST:



City Clerk / Chief Deputy



**INTERGOVERNMENTAL AGREEMENT
CONCERNING
THE NORTHERN COLORADO REGIONAL COMMUNICATION NETWORK**

THIS AGREEMENT is made and entered into this ___ day of ___, 2018, by and between the CITY OF FORT COLLINS, COLORADO, a municipal corporation (hereinafter referred to as "Fort Collins"), the CITY OF LOVELAND, COLORADO, a municipal corporation (hereinafter referred to as "Loveland"), and LARIMER COUNTY, COLORADO, a political subdivision of the State of Colorado (hereinafter referred to as the "County").

WHEREAS, Fort Collins, Loveland, and the County (the "Partners") desire to share in the management, use, and cost of operating a regional radio communications system ("Regional System" or System), and desire to enter into this Agreement in order to state their respective rights and obligations concerning the purchase, maintenance, operation, and use of the System; and

WHEREAS, the purpose of NCRCN is to provide a means for the member agencies to economically combine resources and provide an interoperable public safety radio system for the citizens of Larimer County communities; and

WHEREAS, NCRCN is a resource sharing radio network and serves as a sub-system within the Colorado statewide Digital Trunked Radio System (DTRS). NCRCN Partners/Members provide site and dispatch center infrastructure connected to the System and Zone cores for common use in the DTRS; and

WHEREAS, in the performance of their governmental functions, each Partner has obtained, through leases or purchases, certain radio and associated communications equipment which is part of the System consisting of certain 800/700 MHZ trunked repeaters and related fixed equipment ("Infrastructure") utilized and provided by the Partners; and

WHEREAS, the Partners are authorized to utilize radio communications in the performance of their various governmental functions and to enter into intergovernmental agreements to provide any function, service, or facility as provided in Sections 29-1-201, C.R.S., and 29-1-203, C.R.S.

WHEREAS, the Partners desire to continue to cooperate and contract with one another and with other parties that may wish to become Members of the NCRCN, as defined below, through separate IGAs, ("Members").

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Partners agree as follows:

1. **Term**

This Agreement shall be effective as of the date written above, and shall continue for five years with an option to extend it in five-year increments. Any party may terminate its part in this Agreement as provided in paragraph 17, below.

2. **Establishment**

There is hereby established an association of entities to be known as the Northern Colorado Regional Communication Network ("NCRCN") for the purpose of coordinating and facilitating the Regional System's activities and modifications. Each entity located in Northern Colorado that has subscriber units on the System with approval of the Executive Committee shall be entitled to membership in the NCRCN through a separate agreement.

The NCRCN is not a separate legal entity. The parties enter into this Agreement as separate and independent entities and each shall maintain such status throughout the term of this Agreement.

3. **Executive Committee and Delegation of Authority to Executive Committee**

- a. **General**: The NCRCN Partners shall cooperate through an Executive Committee made up of one senior management member from each Partner. The Executive Committee will generate operational policy and oversee all operations.
- b. **By-laws**: The Executive Committee shall adopt by-laws setting forth the rules under which the Committee shall operate, including what manner if any electronic participation is authorized. Each member of the Executive Committee shall have one vote.
- c. **Voting**: The Executive Committee shall meet at least quarterly for the purpose of reviewing the performance and operation of the Regional System. Only decisions made with all Executive Committee Members present, which constitutes a quorum, and a 2/3 vote of the Executive Committee with regard to the operation of the Regional System, shall be binding upon each Partner and Member to this Agreement. By executing this Agreement, the governing body of each entity hereby delegates to the Executive Committee of the NCRCN the power and authority to make decisions concerning the operation of the Regional System. The Executive Committee shall have the authority to restrict access to and use of the Regional System by any user who is not an entity bound by this Agreement.

4. Technical Committee

A Technical Committee will advise the Executive Committee on technical, functional, and operational matters as required. Members of the Technical Committee will be nominated by either a Partner or a Member agency (collectively referred to as parties) and must be approved by a majority of the Executive Committee. If funding is necessary, the Technical Committee shall seek funding from each Partner's appropriate governing body.

5. Membership

Any entity in Colorado may become a Member of the NCRCN by providing the Executive Committee with documentation evidencing the number of subscriber units, which the entity has allocated on the System, and may be approved for Membership by the Executive Committee and by agreeing to the terms and conditions of this Agreement through a separate agreement executed with the Partner owning the primarily utilized Infrastructure and by that Member paying the fees to that Partner as established annually by the Executive Committee.

6. System

The System shall consist of the equipment/radios, software, maintenance, and services purchased in order to become compliant with the State of Colorado's Digital Trunked Radio System (DTRS). The DTRS system assets solely owned by a Partner, will be retained by that Partner. The Partners acknowledge and approve the following division of NCRCN "system" assets:

City of Fort Collins

- Horsetooth (Although Fort Collins is responsible for the NCRCN system assets at Horsetooth, Larimer County owns other equipment at this Horsetooth site that is not part of the NCRCN system assets, as described in this section, including grounds, building, generator, microwave, and other miscellaneous electronics.)
- Poudre Valley Hospital

City of Loveland

- Loveland
- Bald Mountain North

Larimer County

- Drake

The Partners may cooperatively manage and/or fund equipment, frequencies, and maintenance between themselves or with other entities such as the State of Colorado-OIT at any jointly utilized site.

7. **Ownership, Maintenance, and Update of System**

Each of the Partners shall maintain and update their respective part of the System. Future System components and maintenance will be purchased through each Partner's assigned funding and each Partner's respective purchasing procedures and guidelines. Any future grants, stipends, other outside funding, reimbursements, excluding pre-existing member contributions as described in Sections 8 and 10, shall be applied or credited to the Partners in shares commensurate with their ownership interests in sites and number of radio channels.

The Executive Committee may consider population, geographic area covered, and the rate of usage regarding what percentage each primary partner receives from their pre-existing member as noted in paragraph 10.

Each Partner will provide technicians properly trained in the operation and maintenance of the entire System, who shall maintain each Infrastructure and who may share responsibility for System administration.

NCRCN members owning site and dispatch center infrastructure maintain the DTRS standard level of technology through system upgrades in accordance with the DTRS upgrade plan. Partners may provide their own software and hardware upgrades or may partner with Colorado OIT, through individual agency agreements for system upgrades.

In the event that any of the Parties' portions of the System are lease-purchased, the individual City/County shall be the sole Lessee in any lease-purchase agreement, and shall be the sole entity authorized to exercise any purchase option under such agreement and take title to any lease-purchase equipment. Nothing in this Agreement shall prevent or constrain that entity or the leasing company from terminating any lease-purchase agreement under the terms of such agreement.

8. **Cost Allocation and Member Contributions**

Each Partner assumes the responsibility of allocating the necessary funding through its budgeting and financial systems to maintain its owned assets. Each Partner may enter into separate agreements with Members that primarily utilize the Partner's Infrastructure and will charge such Member a per-subscriber unit fee or flat fee that will be established annually at the beginning of each calendar year by the Executive Committee. No partner will charge a member agency more than the annually established fee or agreed upon costs but may negotiate lesser fees based on system usage. A template of said agreement for Partners to use with associated Member's is attached as **Exhibit A**.

The fees will be paid from the Member organization directly to the Partner with which the Member has signed a subsequent IGA and will be utilized by the Partner for any expenses directly related to the maintenance, support, or the upgrade or enhancement of the System.

Nothing in this Agreement keeps two or more Partners/Members from cooperating financially or logistically to maintain, support, or upgrade any part of the System or individually held assets beyond the basic obligations set forth in this Agreement.

9. Restriction of Use and System Degradation

In the event that a Partner, Member, or other user causes any negative interference or otherwise causes disruption/damage to said Infrastructure or the Regional System, or fails to pay the fees set by the Executive Committee, the Partner owning the Infrastructure may restrict use of said Infrastructure by the entity causing interference, disruption, damage, or failure to pay.

No Partner or Member shall engage in any activity that might result in the degradation of the System. If such activity is identified, the responsible party will take immediate action to rectify the situation and restore System functionality to pre-degradation levels at the responsible party's cost.

10. Pre-Existing Members / Interconnection

The Partners agree that the following agencies are pre-existing Members and that such agencies are authorized to interconnect to the system once agreements are executed with the Partner that own their primarily used System asset/Infrastructure. The pre-existing Members and their primary Partner are as follows:

- | | |
|--|----------------------|
| 1. Banner Health Emergency | City of Fort Collins |
| 2. Berthoud Fire Department | City of Loveland |
| 3. Bureau of Reclamation | City of Fort Collins |
| 4. CSU Police Department | City of Fort Collins |
| 5. Estes Park Medical Center-EMS | City of Fort Collins |
| 6. Estes Park Police | City of Fort Collins |
| 7. Estes Park Public Works | City of Fort Collins |
| 8. Estes Valley Fire Protection District | City of Fort Collins |
| 9. Federal Protective Service | City of Fort Collins |
| 10. Loveland Fire Rescue Authority | City of Loveland |
| 11. McKee Medical Center | City of Loveland |
| 12. Northern Colorado Water Conservancy District | City of Loveland |
| 13. Platte River Power Authority | City of Fort Collins |
| 14. Poudre Fire Authority | City of Fort Collins |
| 15. Poudre School District | City of Fort Collins |

City of Loveland: Fort Collins, Colorado 80522-0580
City Manager
City of Loveland
500 E 3rd St.
Loveland, Colorado 80537

Copy to: Chief of Police
City of Loveland
810 E 10th St., Suite 100
Loveland, Colorado 80537

County: County Manager
Larimer County
P.O. Box 1190
Fort Collins, Colorado 80522

Copy to: Sheriff
Larimer County
2501 Midpoint Drive
Fort Collins, Colorado 80525

13. Jurisdiction of Entity

Except as set forth in paragraph three (3) concerning the delegation of the authority to make decisions concerning the operation of the Regional System, nothing in this Agreement shall be construed to limit the authority or jurisdiction of any Partner or Member of the NCRCN.

14. Liability

Each Partner and Member shall be responsible for any and all claims, damages, liability and court awards including costs, expenses and attorney fees incurred as a result of any action or omission of such Partner or Member or its officers, employees and agents in connection with the performance of this Agreement.

Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations any Partner or Member may have under the Colorado Governmental Immunity Act (Sec. 24-10-101, C.R.S., et. seq.) or to any other defenses, immunities, or limitations of liability available to them by law.

Each entity, which is a party to this Agreement, is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by §§24-10-

101 et seq., C.R.S., as from time to time amended, or otherwise available to the Entity, its officers, or its employees.

15. Appropriations

All financial obligations of the parties to this Agreement, including but not limited to the funding obligations hereof, are subject to budgeting and appropriation of such funds by the governing body, of each Partner, each fiscal year. This agreement, shall not be construed to create a multiple fiscal year debt or other financial obligation.

16. Default/Remedies

Except as otherwise provided herein, in the event any party should fail or refuse to perform according to the terms of this Agreement, such party will be in default.

In the event a party is in default, there shall be a period of 20 days, within which the defaulting party may give written notice to cure said default. In the event the default remains uncorrected, the non-defaulting party may elect to avail itself of any other remedy at law or equity.

17. Termination

Any Partner may terminate this Agreement at any time, without cause, upon one (1) year written notice to the other parties, or by January 1 of any year if such party's governing body fails to appropriate sufficient funds for that year. Upon termination, each Partner shall retain possession of the portion of the System housed in/at its facilities or sites, and such facilities shall be removed from the System.

Should a Partner terminate this agreement under the instant paragraph, the NCRCN shall dissolve unless the Executive Committee, excluding any Executive Committee member from the terminating agency, vote, by simple majority, to amend this IGA, permitting the NCRCN to survive without the terminating Partner. All members who have IGAs with the terminating Partner shall be removed unless they enter into a new IGA with a remaining partner within 60 days.

18. Non-waiver

No waiver of any breach of this Agreement shall be held or construed to be a waiver of any subsequent breach thereof.

19. Assignment

The parties may not assign any rights or delegate any duties under this Agreement without the written consent of all parties.

20. Entire Agreement

This Agreement, along with all exhibits and other documents incorporated herein, shall constitute the entire agreement of the Partners and supersedes any prior agreement between the Partners and pre-existing Members. This Agreement shall inure to the benefit of their respective successors and assigns. Covenants or representations not contained in this Agreement shall not be binding on the parties. No amendment to this Agreement shall be enforceable unless in writing and signed by both parties.

21. Law/Severability

This Agreement shall be governed in all respects by the laws of the State of Colorado. 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.

22. Attorney's Fees

In the event that any Partner shall default under any of the provisions of this Agreement and the non-defaulting Partners shall commence litigation to enforce this Agreement, the defaulting Partner shall be liable for all costs, expenses and reasonable attorneys' fees incurred by the non-defaulting Partners concerning such litigation.

23. Counterparts/ Electronic Signatures

This Contract may be executed in counterparts, or by electronic signature in accordance with C.R.S 24-71.3-101 et seq.

SIGNATURE PAGE

INTERGOVERNMENTAL AGREEMENT REGARDING THE
NORTHERN COLORADO REGIONAL COMMUNICATIONS NETWORK
(TOTAL PAGES OF AGREEMENT – 15)
(TOTAL SIGNATURE PAGES – 3)

Dated this _____, 2018.

CITY OF FORT COLLINS, COLORADO
A Municipal Corporation

By: _____
Darin A. Atteberry, City Manager

Date: _____

ATTEST:

City Clerk

Date

APPROVED AS TO SUBSTANCE:

Terry Jones, Chief of Police

Date

APPROVED AS TO FORM:

Assistant City Attorney

Date

SIGNATURE PAGE

INTERGOVERNMENTAL AGREEMENT REGARDING THE
NORTHERN COLORADO REGIONAL COMMUNICATIONS NETWORK
(TOTAL PAGES OF AGREEMENT – 15)
(TOTAL SIGNATURE PAGES – 3)

Dated this _____, 2018.

CITY OF LOVELAND, COLORADO

By: _____
Steve C Adams, City Manager

Date: _____

ATTEST:

City Clerk

Date

APPROVED AS TO SUBSTANCE:

Bob Ticer, Chief of Police

Date

APPROVED AS TO FORM:

Assistant City Attorney

Date

SIGNATURE PAGE

INTERGOVERNMENTAL AGREEMENT REGARDING THE
NORTHERN COLORADO REGIONAL COMMUNICATIONS NETWORK
(TOTAL PAGES OF AGREEMENT – 15)
(TOTAL SIGNATURE PAGES – 3)

Dated this _____, 2018.

LARIMER COUNTY

By: _____
County Manager

Date: _____

ATTEST:

City Clerk

Date

APPROVED AS TO SUBSTANCE:

Date

APPROVED AS TO FORM:

County Attorney

Date

EXHIBIT A TO NCRCN IGA

AGREEMENT CONCERNING MEMBER CONTRIBUTION TO THE NORTHERN COLORADO REGIONAL COMMUNICATION NETWORK (NCRCN) ASSOCIATED PARTNER AGENCY

THIS AGREEMENT, made and entered into this ____ day of _____, 201_, by and between the [Insert Partner Agency], [a Colorado municipal corporation] [a political subdivision of the state of Colorado] ("the City" [the County]) and the [member agency] ("_____").

WHEREAS, the NCRCN Partner Agency [insert Partner Agency] desires to provide effective communication with other Member Agencies; and

WHEREAS, the NCRCN was created via Intergovernmental Agreement between three Partner Agencies which include, the City of Fort Collins, Larimer County, and the City of Loveland; and

WHEREAS, [insert relevant member agency] desires to maintain access to the NCRCN and falls under the primary coverage of [insert relevant Partner agency]; and

WHEREAS, [insert relevant Partner agency] desires to receive an annual member contribution in an effort to maintain and grow the Partner agencies communication assets for the benefit of both the partner agency and the member agency.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. **Term:** The term of this agreement shall begin on _____, and shall be automatically renewed yearly from the date of execution of this agreement, unless terminated sooner as provided herein.
2. **Price:** As a Partner Agency, the Member Agency shall pay _____ per year to Partner Agency for access to the NCRCN. The aforementioned amount was calculated using an agreed upon method by the Executive Committee for the NCRCN. Said price is subject to change every year based upon the method for calculation utilized by the NCRCN Executive Committee which may include costs to repair or upgrade the site/system infrastructure and/or add new functionality to the NCRCN sites.
3. **Services:** Member agency, upon yearly payment due within thirty (30) days of automatic renewal or thirty (30) days of execution for the first year, shall have access to the entire NCRCN as a Member Agency.
4. **Member Obligation:** All provisions of the 2018 NCRCN agreement are hereby incorporated and hereby made a part of this Agreement.
5. **Equipment and Responsibility:** The Partner Agencies remain responsible for all maintenance of the Partner Agencies network infrastructure. Member Agency is responsible for ensuring that communication devices utilized by the Member Agency are capable of sending and receiving signals and otherwise compatible with the infrastructure equipment utilized by the Partner Agencies. The Member Agency is also responsible for ensuring that

communication devices utilized by the Member Agency are in good working condition.

6. **Appropriation:** The Partner Agencies are all governmental entities; therefore, this agreement shall be subject to annual appropriations pursuant to Article X, Section 20 of the Colorado Constitution. If Partner Agency does not receive appropriated funds sufficient to participate in this agreement, the agreement shall automatically terminate at the end of such current fiscal period for which funds have been allocated, without penalty to the Partner Agency. Such termination shall not constitute an event of default under any other provision of this Agreement, and the parties shall be obligated to pay all charges incurred through the end of the current fiscal period. The non-appropriating party shall give written notice of such unavailability of funds not later than thirty (30) calendar days after it receives notice of such unavailability.
7. **Liability:** The parties, to the extent permitted by federal and state law, shall be liable for the acts or omissions of its respective personnel. Nothing herein shall be deemed a waiver of the notice requirements, defenses, immunities and limitations of liability that the parties and their respective officers and employees may have under the Colorado Governmental Immunity Act (C.R.S. Section 24-10-101, et seq.) and under any other law. Each Party, to the extent permitted by law, waives all claims and causes of action against the other Parties for compensation, damages, personal injury or death occurring as a consequence, direct or indirect, of the performance of this Agreement. Each Party shall be liable for any worker's compensation claims filed by its respective personnel arising from injuries sustained as a result of performance under this Agreement.
8. **Relationship of the Parties:** The Parties hereto enter into this Agreement as separate and independent entities and each shall maintain that status throughout the term of this Agreement.
9. **Good Faith Dispute Resolution:** If there is any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, the Participating Agencies agree to discuss, in good faith, amendments to this Agreement and/or other possible resolutions. Accordingly, the Parties will first elevate the disputed issues to the respective supervisors, and if the matters are not resolved, the Parties may then engage in mediation or other non-binding dispute resolution methods.
10. **Governing Law and Venue:** This Agreement is made in and shall be construed and interpreted in accordance with the laws of the State of Colorado and venue will be in Larimer County, Colorado.
11. **Severability:** If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, is held invalid, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those in which it is held invalid, shall not be affected.
12. **Waiver:** No waiver by any of the Parties of any of the terms and conditions of this Agreement shall be deemed to be or be construed as a waiver of any other term or condition of this Agreement, nor shall a waiver of any breach of this Agreement be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
13. **Force Majeure:** Notwithstanding anything contained herein to the contrary, it is agreed that

in the event and to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, war, illegality, act of God, or any other cause beyond the control of any of the Parties hereto, or strikes and labor troubles (whether or not within the power of the party affected to settle the same) prevents or delays performance by any party to this Agreement, such party shall be relieved of the consequences thereof without liability, so long as and to the extent that performance is prevented by such cause; provided, however, that such party shall exercise due diligence in its efforts to resume performance within a reasonable period of time.

14. **Authority**: The persons who sign and execute this Agreement represent that they are duly authorized to execute this Agreement in their individual or representative capacity.
15. **Assignment**: This Agreement shall not be assigned by any of the Parties hereto without the prior written consent of the other Parties.
16. **Counterpart Signatures**: The parties agree that counterpart signatures of this Agreement shall be acceptable and that execution of the Agreement in the same form by each and every party shall be deemed to constitute full and final execution of the Agreement.