

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 17

DATE: January 20, 2009

STAFF: Mary Moore

SUBJECT

Resolution 2009-006 Approving the Execution of an Agreement to Modify and Amend an Intergovernmental Agreement Concerning the Implementation of an "E911" Emergency Telephone Service.

RECOMMENDATION

Staff recommends adoption of the Resolution.

EXECUTIVE SUMMARY

The City of Fort Collins is a party to an Intergovernmental Agreement ("IGA") dated November 14, 1990, which established a separate legal entity called the Larimer Emergency Telephone Authority ("LETA"). LETA is responsible for administering the operation of the emergency telephone service program (911) and defining the manner in which each of the parties will participate in the authority. On June 4, 2008, the LETA Board of Directors approved an agreement to modify and amend the original IGA. This Resolution approves the execution of the Agreement.

BACKGROUND

On June 4, 2008, the LETA Board of Directors approved an agreement to modify and amend the original IGA. The proposed modification includes the following:

1. LETA will continue to be governed by a seven (7) member Board of Directors, including one representative each from Larimer County, the City of Fort Collins, City of Loveland, the hospital districts of Larimer County, the fire protection districts of Larimer County and two (2) members representing the towns of Berthoud, Estes Park, Johnstown, Timnath, Wellington, Windsor and Colorado State University. The City Council of Fort Collins shall appoint the Fort Collins representative and the City Council of Loveland shall appoint the Loveland Representative. The Board of County Commissioners shall continue to appoint the Larimer County representative as well as the fire and hospital district representatives and the small town representatives, upon nomination by the LETA Board of Directors after consultation with the towns, the districts and Colorado State University. Term of service on the LETA Board shall remain at two (2) years but the existing term limit provisions have been removed, allowing board members to serve multiple and consecutive terms.

2. LETA's powers shall essentially remain the same, but those powers are more clearly enumerated. The most significant change in this regard is the delegation to the LETA Board of Directors of the power to establish the annual surcharge to be collected on hardwire and wireless phones in Larimer County. Presently, the County Commissioners and the governing bodies of the cities and towns have been asked to approve this surcharge. Even though the LETA surcharge which began at \$.50 in 1990 and has not been changed since its reduction to \$.45 in 1995, the process of having all of the governing bodies annually approve the surcharge has been cumbersome and time consuming. Having the LETA Board set the surcharge should be much more efficient. It is important to note that all the members of the LETA Board remain directly responsible to the constituencies which they represent. In other words, while their respective governing bodies may no longer be voting on the surcharge, they retain control over their appointed representatives on the LETA Board.
3. The approval of three-quarters of the signatories replaces the one hundred percent (100%) requirement of the existing IGA. This includes termination of the Authority by mutual agreement, future amendments to the IGA and the assignment and delegation of rights and duties under the IGA.
4. The new IGA clarifies that the LETA Board of Directors and LETA officers and employees are afforded the benefits of Colorado law with regard to governmental immunity.

ATTACHMENTS

1. LETA Board Meeting minutes - February 6, 2008, March 12, 2008, April 2, 2008, May 7, 2008, June 4, 2008, July 31, 2008 and September 3, 2008.

Larimer Emergency Telephone Authority

ATTACHMENT 1

Meeting Minutes

1. **Call to Order/roll call**

Meeting was called to order at 0836.

PRESENT: Treasurer Baudek, Chair Green, Vice Chair Miller, Secretary Moore, Director Richardson, Director Seek (arrived at 0842) and Treasurer Smith (7)

STAFF: Executive Director Culp and Attorney Frey (2)

ABSENT: None (0)

2. **Public Comment**

The floor was opened for public comment. Hearing none, the floor was closed.

3. **Review of the agenda**

The agenda was reviewed and Executive Director Culp asked to add an item C under new business, topic Qwest Maintenance / Support.

4. **Financial Report**

Executive Director Culp highlighted the financial status for the LETA Board. Exec. Dir Culp reminded the Board that the surcharge revenue is two months behind as such this is not an end of year income review. However, all expenditures for 2007 are complete. Exec. Dir Culp reviewed specific expenditure accounts and highlighted the accounts that closed out under or over budget.

5. **Consent agenda**

Secretary Moore moved to approve the consent agenda as submitted, seconded by Director Smith.

The motion UNANIMOUS PASSED on the following vote: **AYES:** Treasurer Baudek, Chair Green, Vice Chair Miller, Secretary Moore, Director Richardson, Director Seek and Director Smith. **NOES:** None. **ABSENT:** None. **ABSTAIN:** None.

→ 6. **New Business**

A. IGA revisions. Exec. Director Culp stated that the IGA was reviewed at the January retreat. It was decided that the Board would do a wholesale rewrite as the IGA has never been completely rewritten and the IGA was

established in 1990. The Board also felt it would be a good idea to review other Authorities IGA for language recommendations. Some of the items that were brought forth to be considered are as follows;

- Writing the IGA to give the Board Authority to set the Surcharge
- Including CSU as a voting member of the Board with the small towns. This request does not create a new seat on the Board but does allow CSU to vote for who will be filling the seat for the small town representation.
- The possibility of removing term limits

Attorney John Frey stated that the best direction for this discussion would be for him to write a draft incorporating these changes / suggestions for the Board to review. Once the draft is in a final format, we would then send it out to the signatories to solicit feedback. This will be a long process but at the end we should get a very solid product. From Attorney Frey's the language in the example IGA's was very helpful. The IGA's do delegate the Authority to set the surcharge which would be very different for this County. Arapahoe County's IGA has language that indicates that the Board has this authority under the emergency telephone act and they talked about the powers of an IGA and delegated the fee setting power to the Authority Board. This would be the right way for us to make this change. Attorney Frey continued that the other large change would be the term limits. Director Smith stated that it takes significant time for someone to learn the business of the Board and that term limits can hinder this process. Attorney Frey continued that CSU would become a small town vote for the voting block. In Jefferson County's IGA example they have the same language as we do about an operating budget is being provided to the Authority from the County Commissioners. The statue has changed and we never go to the County for a budget as we fund ourselves.

Chairman Green stated that he was wondering about item E, the Authority returning surplus operating revenue, do we need to do anything with this since we carry a fund balance. Attorney Frey stated that he is really not sure what this is and he believes it is a result from 12 years prior and a statutory change. Attorney Frey stated he would do additional follow up on this item.

Attorney Frey continued that we should preserve what we have, and change other items that are out of date. For example, the way we do elections and have appointments with the Commissioners. Our IGA is not very clear that if the LETA Board conducts elections and then the Commissioners feel bound by having the elections that they must appoint the person nominated. We might want to consider compiling a list of nominees and allow the Commissioners to pick the person.

Director Richardson recommended that we come up with language to reflect the recommendation the Commissioners could appoint.

Director Smith stated that the language should reflect recommendation from the district.

Commissioner Gibson stated that the general rule they will follow is to accept LETA's recommendation due to the political responsibility piece they have. But general rule is you will know who you want on the Board and how they will best represent the people of that district / area.

Treasurer Baudek asked do we need to have every signatory to be included? Attorney Frey stated no, we could state we need a super majority of 2/3 or more.

Attorney Frey also stated that there is language that if any agency does not comply with LETA we will terminate their service and he is not sure how or if we would do that. Secretary Moore recommended that the language states to perhaps terminate funding instead of terminate services. Treasurer Baudek stated that there has to be some consequence and this needs to be written appropriately. Director Smith agreed. Director Richardson stated there are a couple of issues to think about, if they choose to not participate they will have to buy the equipment from LETA, accountability needs to be included.

Attorney Frey stated that dissolution of the Authority is clear but having an entity not participate is something that we will need to address. Attorney Frey will compile the changes discussed and put a draft in front of the Board in the next few months.

B. Windsor Call routing

This situation was resolved and the Windsor Fire Chief is comfortable with the routing of the calls in that area.

C. Qwest maintenance / support

Exec. Dir Culp stated that one of her projects this year was to secure a resource for maintenance / support for their 9-1-1 phone systems. It appears that this will not be feasible due to internal agreements between the support channels and Qwest. Exec. Dir Culp stated that support / maintenance is something we will need to consider when we procure new equipment at the sites.

7. ~~Executive Director Report~~

~~Written report stands with no questions on the content.~~

Chairman Green called for a motion, Treasurer baudek, one year lease, in the record it should reflect there is no problem with Loveland and this is for the additional staff help that this solution will provide. Attorney Frey stated that I would like the motion to also be subject to our ability to negotiate a lease with them. Director Smith seconded the motion.

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he motion UNANIMOUS PASSED on the following vote: **YES:** Treasurer Baudek, Chair Green, Vice Chair Miller, Secretary Moore, Director Seek and Director Smith. **NOES:** None. **ABSENT:** Director Richardson **ABSTAIN:** None.

Treasurer Baudek stated that we need to give Exec. Dir Culp to move forward with the signing of the lease as approved by Attorney Frey.

7. Executive Director Report

Exec. Dir Culp highlighted two items on the report. The first is in regards to EMD. Exec. Dir Culp stated that as the Board is aware all agencies are required to use all of the medical protocols for the EMD program. It was brought to Exec. Dir Culp's attention that some of the agencies are not using all of the protocols and are specifically not using protocol 29 for traffic accidents. Exec. Dir Culp is working with those agencies to resolve the issue in order to preserve each agencies funding for the upcoming year.

The next item to update the Board on is in regards to Call Boxes. We still have three call boxes out of order. Our call box technician will be on site the end of March with a Verizon Engineer to look at some solutions for those boxes. We are hoping that with the analog signal sunsetted and just a pure digital signal in the area, the boards in the boxes will stop malfunctioning. The work will be done the week of March 24th.

No questions on the Executive Director's report.

8. Attorney Report

The Coplink contract looks great. Attorney Frey just has some additional questions that he will met with Exec. Dir Culp to clarify.

→ Attorney Frey stated that he would work on getting a draft rewrite of the IGA to the Board for the April meeting.

Attorney Frey also stated that he is working with Exec. Dir Culp on the annual report.

9. Old Business

A. COPLINK

This issue will be revisited to determine whether or not the revenue stream would justify the staff time to pursue this issue.

The second amendment requires an audit to be completed yearly by Authority Boards and published on their web site.

The next item is the call boxes. Two of the three call boxes are back in service. The fix for the two boxes were placing dual band antennas due to the digital frequencies received in the area.

The third call box that is still out of service is the call box at glacier view fire. This call box is receiving significant interference in the area which is destroying the internal components of the device. The Verizon Engineer and our Call Box technician have decided to move the call box to the other side of the drive. By moving the box the interference will be corrected and that box will be back in service. This work will be done in the upcoming month.

For Fort Collins phone system, we purchased a service called Managed Services. This service cost LETA over \$100,000. For one year. The service also requires a Comcast line which is a monthly expense of \$100.00 per month. The service is not, and was not, considered to be BETA or newly developed. However the service has not worked correctly over the last several months. We requested that Plant/Qwest extend the contract for a second year at no cost to LETA. Plant has agreed to honor this.

8. **Attorney Report**

Attorney Frey reported that the Board should have received the first draft of the revised IGA.

Attorney Frey opened the discussion about the changes to the IGA and stated that Arapahoe County's model was very good and that the Board will see several of those concepts applied to this revision.

Attorney Frey stated the Chairman Green picked up that CSU was not added in as a signatory. CSU is now in the body in item F as a small town.

The section about what to do is there is a default and we end up with dissolution. Attorney Frey stated he was not sure how we would handle this. In kind, we would make a contribution as to where the equipment is.

Attorney Frey continued that Tabor does not apply in our case.

On Page 3 the Board Composition, Fort Collins, and Loveland determine who they want to fill their seat, Commissioners determine out of the employees, or elective official and Attorney Frey also added citizen.

Exec. Director Culp stated that the process has gone rather smoothly and they have a final Vendor but they have additional discussion items with the Vendor. \

Exec. Dir Culp stated that the RFP was released they received 8 proposals. The evaluation team which was comprised of IT/GIS, PSAP managers, and Emergency Managers met to review the proposals. There were two Vendors that were invited to present their products. The presentation review team was comprised of 25 people. The Vendors were given 3 hours a piece to discuss their product. Of the two Vendors, 3N was selected for further discussions.

7. Executive Director Report

Exec. Dir Culp stated that the call boxes are all working and functional. In the next few months Enroute Traffic will be out at the call boxes doing clean up for each boxes and routine maintenance.

Exec. Dir Culp stated that the PUC meeting is Thursday May 8th @10am. She encouraged the Board to attend as she has arranged a speaker with 9-1-1 Alliance to address the Task Force on their report of the state of 9-1-1 in the nation.

No questions for Exec. Dir Culp on her written report.

8. Attorney Report

Attorney Frey had prepared two resolutions for the Board to consider, 1) donation of the phone system equipment to Julesburg, and 2) the donation of the LETA office furniture to Loveland PD.

Vice Chair Miller made a motion to approve both resolutions as presented by Attorney Frey. Director Seek seconded the motion.

The motion UNANIMOUS PASSED on the following vote: **AYES:** Treasurer Baudek, Chair Green, Vice Chair Miller, Secretary Moore, Director Seek, and Director Smith. **NOES:** None. **ABSENT:** Director Richardson. **ABSTAIN:** None.

→ Attorney Frey reported to the Board that he will reach out directly to Director Richardson to seek out his comments on the rewrite of the IGA. Depending on the comments the Board will have a final draft for the June meeting. Attorney Frey will also be working on a letter to all the signatories discussing the changes on the IGA.

Attorney Frey stated he would also review and rewrite the Bylaws to ensure that we are consistent with the language in both documents.

Culp explained that she wants to be able to audit all contracts, license and other standard bills. Exec. Dir Culp continued that she would be presented the proposed algorithms to the PSAP Managers later this month.

Exec. Dir Culp stated to the Board that she would be out of the office on Thurs June 5, Fri June 6th, and Fri June 12th. As well as July 8, 9, 10th for the PUC meeting which is being held in Durango. She will also be taking a few days off the week of August 20th, exact dates still being determined. She has no extended vacation plans for the summer.

No questions for Exec. Dir Culp on her written report.

8. **Attorney Report**

Attorney Frey stated that he is presenting the final version of the IGA report to the Board for consideration. Attorney Frey highlighted the IGA and stated there are just a few minor changes from the last version and from the electronic version he sent out there have not been any changes. Attorney Frey continued that if the Board is comfortable with the content it would be appropriate to make a motion to accept the IGA as being in final format and to direct Attorney Frey to prepare the letters to be sent to the signatories of the IGA.

Director Smith made the motion, Vice Chair Miller seconded the motion. Discussion, Director Richardson stated that he will not oppose the IGA as written however he has a problem funding a none PSAP entity and that CSU PD is not a PSAP. Director Richardson continued that he cautions the Board about setting precedence by providing service and in this case funding for something that they shouldn't be doing. Director Richardson continued that the Town is facing a very similar problem by providing Fire Service outside the Town boundaries for decades and not charging for those services. Director Richardson stated that Universities on the Western Slope as well as Greeley and in Denver do not receive 9-1-1 funds and are not a voting authority on their 9-1-1 Boards.

Secretary Moore stated that she was told that the State does not allow State entities to receive funding from public entities like a 9-1-1 Authority and that CSU PD could be violating that by taking 9-1-1 funds from LETA. Secretary Moore requested Attorney Frey to look into that.

Director Smith stated that CSU PD is required and mandated to provide law enforcement services which would include the dispatching portion of those services. Director Smith continued that he sees no conflict with providing CSU PD funding and that it is then reasonable to seat them on the Board if they receive the votes from the small towns to do so.

Director Richardson stated that their phone lines do not support LETA as they are not paying a surcharge.

was hired for this project. The company is SDR. The communication has been difficult in person during meetings and completely unprofessional with the emails that are being generated from the company. Exec. Dir Culp has expressed her concerns on several different occasions with the County Staff. Unfortunately the situation has not been resolved. This week alone she has received multiple emails with the project manager from SDR making unprofessional comments and references to her.

Exec Dir Culp reached out directly to the President of SDR, Steed Bell. Mr. Bell is committed to resolving the issue and Dir Culp is confident moving forward that the issues will be handled.

Treasurer Baudek stated that perhaps we need to engage the County and the County Manager Frank Lancaster. Exec Dir Culp stated that if the situation is not resolved after this last attempt she will be reaching out to the Board for support in filing a formal and perhaps joint complaint with the County against the company.

Additional discussion ensued about if there are errors in the SDR database are those errors being introduced and carried throughout the County database. Exec. Dir Culp stated that Dan Coldiron is cleaning up the database and providing a clean and accurate copy of the centerline file and that is what is being distributed throughout our CAD systems. Exec. Dir Culp also stated that Karlin Goggin with the County has access to the LETA GIS dataset.

Call box report

Exec. Dir Culp stated that a few of our call boxes were damaged. One was ran over and one was incased in mud. Enroute traffic has been doing an excellent job and has been very responsive and professional to work with.

No questions for Exec. Dir Culp on her written report.

8. **Attorney Report**

A. IGA

Attorney Frey stated that the IGA went out with an Executive Summary. Attorney Frey will be attending a Board meeting with the Thompson Valley Hospital District to answer any questions they may have.

Attorney Frey stated that he has received some feedback from Fort Collins and from Greg White.

Attorney Frey stated we are on schedule with this and it will take some time and some additional follow up letters but everything is going fine.

B. Consideration of a resolution adopting the Surcharge of \$.45 for 2009.

by Weld County. This may be true for all of the counties that are border counties and that have service being provided by us and Weld County. Exec. Director Culp will start looking into this in the next few months.

Exec Dir Culp continued that to formulate our plan for 5 years it is critical that we understand and know what is going on with 9-1-1 in the nation. Bottom line for the nation is, where is revenue for 9-1-1 being spent, i.e. is it for true 9-1-1 services or for support services outside of the delivery of 9-1-1. i.e FIND THE REVENUE and State oversight.

There is a strong belief in the Nation, and this is growing in our State, that 9-1-1 needs to be controlled from the State level and not the local level. This will be a theme that continues to present itself especially as more legislation is considered for 9-1-1.

Exec Dir Culp continued discussing short and long term plans for equipment replacement and projects. **To see the entire report please visit our website, under document and select long term plan.**

8. **Attorney Report**

A. IGA

Attorney McCargar stated that others are still reviewing the IGA but Park Hospital, Berthoud Fire have approved it.

If the IGA goes through revisions Attorney Frey will run those by the Board.

Johnstown Fire Protection District will be added to the IGA as their response district is partially in Larimer County.

B. 9-1-1 Surcharge

Attorney Frey is targeting October to have this complete.

C. MOU's

Attorney Frey is working on completing the MOU for the funding algorithms.

Exec. Dir Culp is working on the MOU for the 3N contract.

D. Board positions

There are four positions that need reaffirmed at the end of this calendar year.

1. Justin Smith, that has been sent to the County Commissioners
2. Mary Moore, that appointment has been sent to Manager Darin Atteberry.

RESOLUTION 2009-006
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE EXECUTION OF AN AGREEMENT TO MODIFY AND AMEND AN
INTERGOVERNMENTAL AGREEMENT CONCERNING THE IMPLEMENTATION OF AN
“E911” EMERGENCY TELEPHONE SERVICE

WHEREAS, the Larimer Emergency Telephone Authority (“LETA”) was created pursuant to § 29-11-101, et. Seq., C.R.S., by an Intergovernmental Agreement Concerning the Implementation of an “E911” Emergency Telephone Service, dated November 14, 1990 between certain governmental entities located in Larimer County, Colorado (the “E911 Agreement”); and

WHEREAS, the LETA Board of Directors has approved an Agreement to Modify and Amend the E911 Agreement to:

1. add the towns of Windsor and Johnstown as signatories to the E911 Agreement with regard to those portions of Larimer County now included within the respective boundaries of those municipalities; and
2. provide for representation for Windsor and Johnstown on the LETA Board through the members designated in the E911 Agreement as the representatives of the small towns in Larimer County that are signatories to the IGA; and
3. remove the two-term limitation for board members appointed to serve; and
4. allow approval of changes to the IGA by 75% of signatories as opposed to the current 100% requirement; and
5. clarify that LETA directors and employers are covered by the provisions of CGIA;

and

WHEREAS, the E911 Agreement allows for amendment by the parties upon agreement of all the parties, but any amendment must be in writing and executed by all the parties; and

WHEREAS, the City Council believes that the foregoing changes are in the best interests of the City and the health, safety and welfare of its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Agreement to Modify and Amend Intergovernmental Agreement Concerning the Implementation of an “E911” Emergency Telephone Service, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference, is hereby approved by the Council, and the Mayor is hereby authorized to execute the Agreement, subject to such changes in form or substance as the City Manager may, in consultation with the City Attorney, consider to be necessary to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this
20th day of January A.D. 2009.

Mayor

ATTEST:

City Clerk

**THIRD AMENDED INTERGOVERNMENTAL AGREEMENT FOR THE
ESTABLISHMENT OF THE LARIMER EMERGENCY TELEPHONE AUTHORITY**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this _____ day of _____, 2008, by and between the following public entities which shall collectively be referred to as the "Parties", or individually as a "Contracting Party": County of Larimer, the Town of Berthoud, the Town of Estes Park, the City of Fort Collins, the Town of Johnstown, the City of Loveland, the Town of Timnath, the Town of Wellington, the Town of Windsor, Allenspark Fire Protection District, Berthoud Fire Protection District, Loveland Rural Fire Protection District, Pinewood Springs Fire Protection District, Poudre Canyon Fire Protection District, Poudre Valley Fire Protection District, Red Feather Lakes Fire Protection District, Glacier View Fire Protection District, Lyons Fire Protection District, Wellington Fire Protection District, the Windsor/Severance Fire Protection District, Johnstown Fire Protection District, Park Hospital District, Health District of Northern Larimer County, Thompson Valley Health Services District, and Colorado State University.

WITNESSETH:

WHEREAS, pursuant to Article XI of Title 29 of the Colorado Revised Statutes (C.R.S.), as amended, the Parties are authorized to enter into agreements for the purpose of providing emergency telephone services; and

WHEREAS, the Colorado Constitution, Article XIV, Section 18 and §29-1-201, C.R.S., *et seq.* provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other; and

WHEREAS, §29-1-203, C.R.S., as amended, authorizes any political subdivisions or agency of the State of Colorado to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting entities, including the sharing of costs, imposition of taxes, or incurring of debt; and

WHEREAS, on or about November 14, 1990, the Parties entered into an Intergovernmental Agreement concerning the implementation of an E-911 Emergency Telephone Service which established the Larimer Emergency Telephone Authority. This Intergovernmental Agreement was entered into pursuant to the authority granted by Article XI of Title 29 of the Colorado Revised Statutes; and

WHEREAS, on July 7, 1999, the Intergovernmental Agreement between the Parties was amended with regards to the powers of the Authority and the operational procedures of the Authority with regard to budget and funding. Additionally, this Amendment added the Windsor/Severance Fire Protection District and Colorado State University as Contracting Parties to the Agreement; and

WHEREAS, on April 5, 2002, the Intergovernmental Agreement was further amended to add the Town of Windsor, Colorado and the Town of Johnstown, Colorado as Contracting Parties and to afford those entities representation on the Authority's governing board; and

WHEREAS, due to the changes in fact, circumstances, technology and law since the Parties entered into the original Intergovernmental Agreement, and subsequent amendments thereto, the Parties to this Agreement desire to amend the Agreement for the purposes of complying with Colorado law and to carry out the intents and purposes of the Parties; and

WHEREAS, the Parties intend by entering into this Agreement that the Authority hereby created shall fall within the definition of a "public entity" under the Colorado Governmental Immunity Act, §24-10-101, C.R.S., and a "nonprofit organization" under the Volunteer Service Act §§ 12-21-115.5, 13-21-115.7 and 13-21-116, C.R.S.; and

WHEREAS, it is the position of the Parties that emergency telephone authorities created pursuant to Title XI of Article 29, C.R.S., are not subject to the revenue and spending limitations imposed by Article X, Section 20 (2)(d) of the Colorado Constitution ("Amendment 1"), and to the extent that Amendment 1 may be deemed to apply to emergency telephone authorities, the authority created hereby shall operate as an enterprise within the meaning of Amendment 1 and shall thereby be exempt from all revenue and spending limitations imposed by said Amendment; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement for the purposes of establishing a separate legal entity to be known as the Larimer Emergency Telephone Authority and to define the manner in which each of the Parties hereto will participate in the Authority.

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

I. PREAMBLE

The Parties agree that the recitals set forth above are true and correct and those recitals are hereby incorporated in the body of this Agreement.

II. SUPERSEDING ALL PRIOR AGREEMENTS

The Parties agree that upon the approval of this Agreement by all Parties, this Agreement shall supersede all prior agreements, representations and understandings between the Parties, whether written or oral, including but not limited to the Intergovernmental Agreement dated November 14, 1990 and amendments thereto dated July 7, 1999 and April 5, 2002.

III. DEFINITIONS

A. The definitions for the terms “emergency telephone charge,” “emergency telephone service,” “exchange access facilities,” “governing body,” “public agency,” “service supplier,” “service user,” “wireless communications access,” and “wireless carrier” as used in this Agreement shall be the same as the definitions for those terms set forth in §29-11-100.5, C.R.S., as amended.

B. The term “emergency telephone services” shall mean any form of emergency communication which the Authority facilitates or provides to the Parties, and includes but is not limited to, emergency telephone services, wireless communications access, and other developing technologies used for communications purposes.

C. “Proportional basis”, as referred to in Section XV of this Agreement, shall be determined by the direct ratio of the number of service lines within the jurisdictions hereinafter identified to the total number of service lines in all of those identified jurisdictions. For the purposes of this definition “jurisdictions” shall refer to Larimer County and the cities and towns that are Contracting Parties to this Agreement. Larimer County’s proportion shall be determined using those service lines within the unincorporated areas of the County.

IV. ESTABLISHMENT OF THE LARIMER COUNTY EMERGENCY TELEPHONE AUTHORITY

The Parties hereby establish a separate legal entity to be known as the Larimer County Emergency Telephone Authority (the “Authority”) which shall be responsible for administering the installation, operation, maintenance, upgrade and enhancement of emergency telephone services to the citizens of Larimer County, Colorado. The Parties will provide reasonable assistance to the Authority for the purposes of organizing, administering and operating emergency telephone services in Larimer County.

The Authority is hereby created as a nonprofit, public entity established pursuant to §29-1-203, C.R.S. and §29-11-100.5, C.R.S., *et seq.* and in conformance with the Colorado Governmental Immunity Act, §24-10-101, C.R.S., *et seq.* and the Volunteer Service Act §§13-21-115.5, 13-21-115.7 and 13-21-116, C.R.S.

The Parties agree that the Authority is an independent legal entity, separate and distinct from the Parties, but subject to their ownership and control. The lawful boundaries of the Parties, as they may from time to time be changed, shall comprise the jurisdiction of the Authority.

V. ESTABLISHMENT OF THE AUTHORITY BOARD

1. **Governing Board.** The Authority shall be governed by a Board of Directors (the "Board"), which shall have the power to perform all acts necessary, whether express or implied, to fulfill the purpose, and to provide the functions, services and facilities, for which the Authority was created.

2. **Composition of the Board.** The Board shall consist of seven (7) members, all of whom shall be residents of Larimer County. The members of the Board shall be appointed as follows:

a. One member shall be appointed by the Larimer County Board of County Commissioners to serve as a representative from Larimer County.

b. One member shall be appointed by the City Council of the City of Fort Collins to represent the City of Fort Collins. The City of Fort Collins representative shall be an employee, elected official or resident of the City of Fort Collins.

c. One member shall be appointed by the City Council of the City of Loveland to represent the City of Loveland. The City of Loveland representative shall be an employee, elected official or resident of the City of Loveland.

d. One member shall be appointed by the Larimer County Board of County Commissioners to represent the fire districts in Larimer County. This member shall be appointed by the Commissioners upon nomination by the Authority, and shall be an employee, or elected official of a fire district named as a Contracting Party under this Agreement.

e. One member shall be appointed by the Larimer County Board of County Commissioners to represent the hospital districts in Larimer County. This member shall be appointed by the Commissioners upon nomination by the Authority, and shall be an employee, or elected official of a hospital district named as a Contracting Party under this Agreement.

f. Two members shall be appointed by the Larimer County Board of County Commissioners to represent the Towns of Berthoud, Estes Park, Johnstown, Timnath, Wellington and Windsor and Colorado State University. These members shall be appointed by the Commissioners upon nomination by the Authority, and shall be employees, elected officials or residents of the named municipalities or in the case of Colorado State University an employee or appointed official of Colorado State University.

g. Members shall serve a term of two (2) years and there shall be no prohibition on consecutive terms or number of terms. Nothing contained herein shall alter the current composition of the Board, or the current terms of Board members.

h. Each member of the Board shall serve without compensation.

3. **Voting and Quorum.** Each member of the Board shall have one (1) vote. A quorum of the Board shall consist of four (4) members, except that, should there be four (4) or more vacancies at any time, then during that time a quorum shall consist of three (3) members. No official action may be taken by the Board on any matter unless a quorum is present. The affirmative vote of a majority of the Board members present at the time of the vote shall be required for the Board to take action.

4. **Bylaws.** The Board shall promulgate bylaws establishing offices and detailing all matters in connection therewith, including the election, duties and terms of officers and the filling of any officer vacancies, the establishment and responsibilities of committees, scheduling of meetings, and standing operating and fiscal procedures, as it deems necessary, provided the bylaws are in compliance with Articles I and II of Title 29, C.R.S., as amended, and this Intergovernmental Agreement.

VI. POWERS OF THE AUTHORITY

1. **Plenary Powers.** Except as otherwise limited by this Agreement, the Authority, in its own name and as provided herein, shall exercise all powers lawfully authorized by the Parties pursuant to §29-1-203, C.R.S. and §29-11-100.5, C.R.S., *et seq.*, as amended, including all incidental, implied, expressed or such other powers as necessary to execute the purposes of this Agreement. The Authority shall act through its Board, officers and agents as authorized by this Agreement and the Bylaws and Rules and Regulations of the Authority. The Authority shall not have the power to levy taxes on its own behalf or on behalf of any Contracting Party.

2. **Enumerated Powers.** The Authority is authorized to undertake all actions reasonably necessary for the installation, operation and maintenance of emergency telephone services within the Authority's jurisdiction, and which the Authority believes are necessary to carry out the intent and purpose of this Agreement, including but not limited to:

a. Imposing and assuring the collection of an emergency telephone charge in the amount and manner provided by §29-1-203, C.R.S. and §§29-11-102 and 29-11-103, C.R.S., as amended, or as may in the future be amended. This charge may be imposed and collected from land based and wireless carriers, as well as from any other telephone service provided as authorized by §29-11-102, C.R.S., *et seq.* and any future amendment thereto.

b. Acquire, hold, lease (as Lessor or Lessee), sell, or otherwise dispose of any legal or equitable interest in real or personal property in connection with the installation, operation and maintenance of the emergency telephone services.

c. To enter into, make and perform contracts and agreements with other federal, state or local governmental, non-profit and private entities which are reasonably necessary for

the acquisition, repair or maintenance of equipment, or the installation, operation or maintenance of the emergency telephone services.

d. To employ agents, accountants, attorneys, engineers, consultants and other individuals and entities as the Authority deems necessary for the performance of its obligations under this Agreement.

e. to conduct the business and affairs of the Authority.

f. To incur debts, liabilities or obligations to the extent and in the manner permitted by law. To borrow money and from time to time, to make, accept, endorse, execute, issue and deliver notes and other obligations of the Authority for monies borrowed, or in payment for property acquired, or for any of the other purposes, services or functions authorized by this Agreement and as provided by law. To the extent permitted by law, to secure the payment of any Authority obligation by mortgage, pledge, deed, indenture, agreement, or other collateral instrument, or by lien upon or assignment of all or any part of the properties, rights, assets, contracts, easements, revenues and privileges of the authority except that no debt, liability, or obligation shall extend to or be an obligation of any Contracting Party unless properly authorized by such Contracting Party and agreed to in writing.

g. To issue bonds, notes or other obligations payable from the revenues derived or to be derived from the emergency telephone service charge imposed by the authority, in accordance with applicable law, and subject to voter approval, as may be required.

h. To own, operate and maintain real and personal property and facilities individually or in common with others, and to conduct joint, partnership, cooperative or other operations with other individuals and entities, and to exercise all powers and authority incident thereto and authorized by this Agreement.

i. To sue and to be sued in its own name.

j. To adopt and amend from time to time, by resolution, bylaws, rules and regulations as the Board deems necessary and appropriate for the exercise of the powers granted, and performing the obligations imposed by this Agreement.

k. To receive contributions, gifts, bequests, grants, cash, equipment or services from the Parties or any other public or private individual or entity for the furtherance of the intent and purpose of this Agreement, and the Authority's performance of its obligations under this Agreement.

.l. Negotiate and enter into agreements with equipment vendors, suppliers and service suppliers for the acquisition or maintenance of equipment, and for the purpose of

obtaining the benefit of technological developments which the Authority deems necessary to improve or enhance the quality and efficiency of emergency telephone services to the Parties.

m. Any other act of services which the Authority believes is reasonably necessary for the exercise of its powers and the performance of its obligations under this Agreement.

VII. RULES AND REGULATIONS

The Authority Board may promulgate and adopt rules, regulations, policies and procedures which the Board deems necessary to carry out the intent and purposes of this Agreement, and to exercise the Authority's powers and perform the Authority's obligations under this Agreement. After their initial adoption, the rules, regulations, policies and procedures may be modified or amended, provided any such modification or amendment: (a) is approved by a majority vote of the Board; (b) is consistent with the purpose and intent of this Agreement; (c) is not in conflict with any of the provisions of this Agreement; and (d) is in compliance with any and all applicable state and federal laws.

VIII. CHARGES TO BE IMPOSED BY THE AUTHORITY

The Parties agree that the Authority, by and through the Board, may establish a charge for emergency telephone services up to the amount authorized by §29-11-100.5, C.R.S., *et seq.*, as amended from time to time. Said charge shall be assessed on a uniform basis for all Parties within the Authority's jurisdiction.

The Authority shall not establish a charge in excess of the amount authorized by §29-11-102, C.R.S., as amended from time to time, unless the Authority: (1) first obtains approval by two-thirds (2/3) of the Parties; and (2) obtains approval from the Public Utilities Commission pursuant to §29-11-102(2)(b), C.R.S., as may be amended from time to time.

The Authority may invest funds received from any source in accordance with the laws of the State of Colorado for investments by a public entity, and properly adopted investment policies consistent therewith.

IX. USE OF FUNDS – CONTRIBUTIONS

The Authority shall use the funds generated by the charges imposed in Section VIII, above, and all funds received by the Authority from any other source, to pay for the costs of acquiring, maintaining, upgrading and enhancing equipment related to providing emergency telephone services, and/or the installation, operation, maintenance, upgrade and enhancement of emergency telephone services, including, but not limited to, administrative costs of the Authority, in accordance with, and as authorized by, §29-11-104, C.R.S., as amended from time to time. Notwithstanding the foregoing, neither the Authority nor its directors, officers, agents or employees shall use Authority funds or property to conduct political lobbying activities. In

addition, Authority funds shall not be used to lease or purchase vehicles for the personal convenience of the Authority's directors, officers, employee, agents or representatives.

No disbursement shall be made from the funds of the Authority without appropriate supporting documents in accordance with the properly adopted bylaws, rules, regulations and policies of the Authority.

The Authority may carry over funds which have not been used in a given fiscal year to the following fiscal year.

X. BOOKS AND RECORDS

The Authority shall provide for the keeping of accurate and correct books of account on a modified accrual basis, showing in detail the capital costs, costs of services, installation, maintenance and operating costs, and the financial transactions of the Authority. The Authority's books of account shall correctly show any and all revenues, costs, or charges paid to or to be paid by each of the Parties, and all funds received by, and all funds expended by the Authority. The Authority's books and records shall be open to inspection during normal business hours upon reasonable notice by the Parties, their attorneys, accountants or agents. The books and records of the Authority shall also be made available to the public in accordance with the provisions of §24-72-201, C.R.S., *et seq.* (the "Open Records Act").

The Authority shall cause an annual audit to be conducted by an independent Certified Public Accountant licensed to practice in the State of Colorado. The Authority shall comply with the provision of §29-1-601, C.R.S. *et seq.*, as may be amended from time to time. The Authority shall comply with all federal and state financial reporting requirements.

XI. REPORTS TO PARTIES

On an annual basis the Authority shall submit a comprehensive annual report to the Parties summarizing the activities of the Authority and containing information concerning the finances of the Authority.

XII. ASSETS OF THE AUTHORITY

1. **Assets.** Any assets purchased or received by the Authority subsequent to the formation of the Authority shall be owned by the Authority for the mutual benefit of the Parties. Assets purchased with funds of the Authority and one or more Parties shall be owned jointly in proportion to the amounts contributed.

2. **Asset Inventory Schedules.** The Authority shall maintain an asset inventory list for any and all real and personal property acquired by the Authority in whole or in part.

XIII. DEFAULT OF PERFORMANCE

1. In the event any Contracting Party fails to perform any of its covenants and undertakings under this Agreement, this Agreement may be terminated as to such Contracting Party. The Authority shall cause written notice of the Authority's intention to terminate said Agreement as to such Contracting Party to be given to that party's governing body identifying the matter in default. Upon failure to cure any such default within thirty (30) days after such notice is given, the membership in the Authority of the defaulting party shall thereupon terminate and said Contracting Party shall thereafter have no voting rights as a member of the Authority, nor be entitled to representation on the Board, and said Contracting Party may thereafter be denied service by the Authority. Furthermore, any Contracting Party whose participation is terminated under the provisions of this article of the Agreement shall forfeit all right, title and interest in and to any property of or within the Authority to which it may otherwise be entitled upon the dissolution of the Authority. This article is not intended to limit the right of the Authority or any Contracting Party under this Agreement to pursue any and all other remedies it may have for breach of this Agreement.

2. In the event of litigation between any Parties hereto concerning this Agreement (or between the Authority and any Contracting Party), the prevailing party may recover its costs and reasonable attorney fees incurred therein.

XIV. DURATION OF AGREEMENT

This Agreement shall be in effect from the time it is fully executed and shall continue on a year-to-year basis, unless sooner terminated in accordance with Section XV of this Agreement.

XV. WITHDRAWAL, TERMINATION AND DISSOLUTION

1. **Individual Party's Withdrawal.** Any Contracting Party may withdraw from this Authority and terminate its membership under this Agreement by providing written notice to each Contracting Party and the Board at least ninety (90) days prior to August 1 of any given year. Withdrawal from the Authority shall become effective on January 1 of the year in which a timely notice of termination is given. A Contracting Party which withdraws from the Authority shall retain all right, title and interest to any real and personal property, if any, which it has contributed to the Authority and which is located within the withdrawing party's jurisdiction; however, the withdrawing Contracting Party shall make the property available for use by the Authority to the extent necessary for public safety.

2. **Termination by Mutual Agreement of the Parties.** Upon a three quarters (3/4) majority vote of all Parties, this Agreement shall be terminated and the Authority dissolved. The effective date of termination shall be December 31st of the calendar year in which the three quarters (3/4) majority vote for termination occurs.

3. **Dissolution of Authority.** Upon the termination of this Agreement pursuant to Section XV(2) above, the Authority Board and the Parties shall take such actions necessary to finalize and conclude the Authority's operations and effect the orderly dissolution of the authority.

All contributions of real and personal property, all revenues received by the Authority, and all assets of the Authority shall be distributed on a proportional basis. The Board shall be responsible for inventorying the revenues, property and assets of the Authority, making distributions to the Parties and concluding the affairs of the Authority. A Contracting Party which has made a contribution toward a jointly owned asset (as defined in Section XII) shall be entitled to retain ownership of the asset upon termination; however, the Contracting Party must account to the Authority for the amount of the Authority's contribution toward purchase of the asset upon distribution of the other assets of the Authority. Upon termination, any revenues derived from emergency telephone service charges imposed pursuant to §29-11-102, C.R.S. will be distributed on a proportional basis in accordance with §29-11-104(3), C.R.S. Such funds can be distributed to the Parties only if the emergency telephone service is discontinued. All other real and personal property, and all contributions and revenues, shall likewise be distributed on a proportional basis.

If a Contracting Party does not agree to the Authority's division of assets within six (6) months from the effective date of termination, the Parties shall engage in mediation on all unresolved issues prior to engaging in legal proceedings. In any legal proceeding, the Court may award attorney fees, expenses and costs of the proceeding to any Contracting Party or the Authority if the Court determines that the proceeding was necessitated by an unreasonable position, or unreasonable demands of a Contracting Party.

The rights and duties of the Parties related to apportionment, division, transfer and ownership of assets upon termination shall survive termination of this Agreement.

The Parties agree that during the period following the vote to terminate the Authority, the Authority will continue to provide emergency telephone services in accordance with this Agreement until the effective date of termination.

XVI. LIABILITY OF THE BOARD OF DIRECTORS, OFFICERS AND EMPLOYEES OF THE AUTHORITY

As a non-profit public entity, the Authority and its directors, officers and employees shall be immune from civil liability in accordance with, and the extent provided by §24-10-101, C.R.S., *et seq.* (the Governmental Immunity Act), §§13-21-115.5, 13-21-115.7 and 13-21-116, C.R.S. (the Volunteer Service Act), as these statutes may be amended from time to time and any other applicable law.

In addition, the Authority shall purchase insurance for the Authority and its Board, officers and employees which insurance will provide reasonable coverage against any claims, suit or proceeding arising out of or relating to any act or omission under this Agreement.

XVII. AMENDMENTS

This Agreement may be amended upon the affirmative vote of three-quarters (3/4) of the Parties eligible to vote.

XVIII. SEVERABILITY

In the event any provision of this Agreement is determined to be illegal or invalid for any reason, all other provisions of this Agreement shall remain in full force and effect unless and until otherwise determined. The illegality of any provision of this Agreement shall in no way affect the legality and enforceability of any other provision of this Agreement.

XIX. SUCCESSORS AND THIRD PARTIES

This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties. This Agreement is not intended to, and does not, inure to the benefit any individual or entity who is not a Party to this Agreement.

XX. ASSIGNMENT AND DELEGATION

No Contracting Party shall assign any of the rights nor delegate any of the duties created by this Agreement without the written approval of three quarters (3/4) of the other Parties to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused their representatives to affix their respective signatures hereto, as of the day and year hereinafter set forth.

**COUNTY OF LARIMER
STATE OF COLORADO**

By _____

ATTEST:

Date: _____

TOWN OF ESTES PARK, COLORADO

By _____

ATTEST:

Date: _____

TOWN OF WELLINGTON, COLORADO

By _____

ATTEST:

Date: _____

**CITY OF FORT COLLINS,
COLORADO**

By _____

ATTEST:

Date: _____

TOWN OF BERTHOUD, COLORADO

By _____

ATTEST:

Date: _____

CITY OF LOVELAND, COLORADO

By _____

ATTEST:

Date: _____

TOWN OF JOHNSTOWN, COLORADO

By _____

ATTEST:

Date: _____

ALLENSPARK FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

BERTHOUD FIRE PROTECTION PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

TOWN OF WINDSOR, COLORADO

By _____

ATTEST:

Date: _____

TOWN OF TIMNATH, COLORADO

By _____

ATTEST:

Date: _____

POUDRE VALLEY FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

LOVELAND RURAL FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

PINEWOOD SPRINGS FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

GLACIER VIEW FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

RED FEATHER LAKES FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

WELLINGTON FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

HEALTH DISTRICT OF NORTHERN LARIMER COUNTY

By _____

ATTEST:

Date: _____

LYONS FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

POUDRE CANYON FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

WINDSOR-SEVERANCE FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

THOMPSON VALLEY HEALTH SERVICES DISTRICT

By _____

ATTEST:

Date: _____

PARK HOSPITAL DISTRICT

By _____

ATTEST:

Date: _____

JOHNSTOWN FIRE PROTECTION DISTRICT

By _____

ATTEST:

Date: _____

COLORADO STATE UNIVERSITY

By: _____

ATTEST:

Date: _____

**COUNTY OF LARIMER
STATE OF COLORADO**

By _____

ATTEST:

Date: _____

TOWN OF ESTES PARK, COLORADO

By _____

ATTEST:

Date: _____

TOWN OF WELLINGTON, COLORADO

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ATTEST:

Date: _____

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COLORADO**

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By _____

ATTEST:

Date: _____

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STATE OF COLORADO**

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COLORADO**

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Date: _____

CITY OF LOVELAND, COLORADO

By _____

ATTEST:

Date: _____