

MEMORANDUM OF UNDERSTANDING
Between
Governor's Office of Information Technology, (OIT)
Communication Services

And the
City of Pueblo, a Municipal Corporation

1. Memorandum of Understanding (MOU)

This Memorandum of Understanding (MOU) is entered into by and among the City of Pueblo, 200 South Main, Pueblo, Colorado 81003, hereinafter referred to as the "Receiving Agency" and the State Of Colorado, Governor's Office of Information Technology, Communication Services, 601 East 18th Avenue, Denver, CO 80203, hereinafter referred to as the "State", and jointly referred to as the "Parties".

2. Purpose:

This MOU shall define the framework for allowing the State and the Receiving Agency to benefit from State supported and planned upgrades and updates of public safety statewide digital trunked radio (DTR) system **software**. This MOU shall specifically address the upgrade of system software from SR 7.5 to SR 7.14.

The Parties have functionally connected their respective Radio Systems and this MOU documents the sharing of resources to the mutual benefit of all Parties.

3. Statement of Mutual Interests and Benefits:

The Parties, through cooperation in the DTR system, provide a public safety communications capability serving state agencies and participating local, regional, Tribal and Federal government entities. It is in the best interest and for the greater benefit of all users of the DTR system to improve public safety communications by State, Local, Regional, Tribal and Federal Governments sharing resources and capabilities.

The sharing of communications resources are actions that may substantially reduce costs and enhance interoperable communications for local, county, state, tribal and federal public safety providers.

DTR system upgrades and enhancements performed in concert and across the system provide the greatest benefit and advantage to all DTR system users. As part of its participation in the DTR system, the State is seeking to improve public safety communications across the state by providing a system wide upgrade to the shared resources and capabilities.

Maintaining DTR system consistency and stability are critical to the reliable performance of the system statewide. In order to maintain system software consistency, routine MOTOPATCH software patches and system security updates provided by Motorola, and downloaded to the State's Master Zone, will be pushed to all connected DTR system components by the State engineering staff.

4. Cooperators Agree:

- 4.1 The installation of DTR system **software** upgrades on Receiving Agency owned computer equipment at RF sites and in dispatch centers in no way changes Receiving Agency ownership or otherwise alters control of Receiving Agency owned equipment. Receiving Agency reserves the right to refuse the installation of DTR system **software** upgrades on Receiving Agency owned equipment at RF sites and in Receiving Agency dispatch centers. It is understood that by refusing installation of DTR system **software** upgrades Receiving Agency risks the loss of public safety communications interoperability, and in some cases operability, capabilities currently offered by the DTR system. Receiving Agency fully and completely understands that all integrated components of the DTR system must operate on the same System Release software version. Refusal of the installation of this software upgrade will make any component **not** receiving the software upgrade/s incompatible with the DTR system. Receiving Agency DTR system components identified as incompatible with the DTR system will require disconnection from the Master Zone.
- 4.2 Unless specifically authorized in this MOU, neither Party, nor their representative shall adjust, maintain or otherwise touch equipment owned by another without written agreement to do so prior to adjustment, maintenance or other action taking place.
 - 4.2.1 Receiving Agency is fully and completely responsible for ensuring its hardware meets Motorola specifications to remain operational with the new System Release software. Equipment malfunctions due to **software** upgrades provided by the State for this system wide upgrade shall be reported to the Receiving Agency's authorized Motorola Dealer for service or repair. The Service Level Agreement (SLA) located in the CCNC Policy and Procedure Manual (<http://www.ccncinc.org>) shall be considered the standard for service and repair of defective or malfunctioning equipment or **software**.
- 4.3 Parties agree to establish and maintain safety and security guidelines for site user representatives to follow when accessing the sites.
- 4.4 State shall work in concert with Receiving Agency to plan and schedule installation of **software** updates. Every effort will be made to give ample time and opportunity for Receiving Agency to prepare for the State installation, testing and monitoring of the new **software** and equipment.

Receiving Agency understands and expects there will be limited disruption in service during the installation of **software** updates on dispatch console equipment and equipment at RF sites. State and its agents and contractors will make every effort to limit the disruption in service to the shortest duration possible.

- 4.5 Each Party shall notify the other Party 24 hours in advance, if possible, should it become necessary to temporarily sever an interconnection or to interrupt a circuit elsewhere in its system that would affect the operation of the other Party's equipment or circuits.
- 4.6 Receiving Agency grants permission to the State and its authorized employees, agents, and contractors to enter its associated buildings, easements and rights-of-way to install, test, and operate the **software** provided for in Exhibit A to this MOU; provided that proper advance arrangements are made with the Receiving Agency owning such buildings, easements and rights-of-way.
- 4.7 For purposes of this MOU, the State agrees to purchase and provide for the installation, testing, and monitoring of the DTR system **software** updates/upgrades from SR 7.5 to SR 7.14 as defined in Exhibit A.
- 4.8 Receiving Agency agrees that acceptance of the DTR system **software** upgrades obligates the Receiving Agency to remain an active, connected, and integral partner of the DTR system for a minimum period of five (5) years from the beginning of this upgrade on July 1, 2013 and expiring on June 30, 2018.
 - 4.8.1 Should the Receiving Agency elect to disconnect or otherwise cease participation with the DTR system prior to the agreed upon term, Receiving Agency shall be responsible for reimbursement to the State for an apportioned cost of the DTR system upgrade cost incurred by the State during this system-wide upgrade.
 - 4.8.1.1 State investment in this upgrade specifically provided to Receiving Agency is: \$ 250,502.00. Apportioned cost shall be divided into sixty (60) equal monthly amounts of \$4,175.03.
 - 4.8.2 Receiving Agency has current connectivity to the DTR system network through ports on the State of Colorado Master Site, Zone 1, located in Denver. In the event that a new Zone Master Site is added and fully integrated in to the DTR system the Receiving Agency reserves the right to move its DTR system network connectivity to that new Zone without State expectation of reimbursement for the Receiving Agency portion of the DTR system upgrade specific to, and defined in, this MOU.
 - 4.8.3 State reserves the right to evaluate Receiving Agency concerns with regards to the obligations defined in this MOU on a case-by-case basis.

- 4.9 In some isolated cases, Motorola MCC7500 console hardware upgrades may be required in order to operate on the new system software platform. It is the full responsibility, and at the sole expense of the Receiving Agency to upgrade their console hardware to be compatible with the new system software prior to the system wide software upgrade.
- 4.10 Each Party shall be responsible for claims arising from the alleged negligent acts or omissions of the Party's employees or agents, which occurred or are alleged to have occurred during the performance of their duties in the maintenance of the equipment, unless such acts or omissions occurred outside the scope of their employment or were willful and wanton. Such claims shall be subject to the limitations of the Colorado Governmental Immunity Act, CRS 24-10-101 et seq. and nothing herein shall be construed as a waiver of the Colorado Governmental Immunity Act.

5. Insurance:

Each Party shall at its sole cost and expense, obtain insurance or self insure, its inventory, equipment, and all other property associated with this equipment against loss resulting from fire or other casualty.

6. Control and Possession of Systems:

Each Party shall remain in exclusive control and possession of its own telecommunications system and equipment and this MOU shall not be construed to grant any Party any rights of ownership, control, or possession of the other Party's systems or equipment, other than those which may be specifically set forth herein or in exhibits hereto.

7. Nondedication of Equipment:

The Parties do not intend to dedicate, and nothing in this MOU shall be construed as constituting a dedication by any Party of its rights, or equipment, or any part thereof, to the other Parties or any customer or member of the other Party.

8. Uncontrollable Forces:

No Party shall be considered to be in default in performance of any of its obligations under this MOU when a failure of performance shall be due to an uncontrollable force. The term "uncontrollable force" means any cause beyond the control of the Party affected including, but not restricted to, failure or threat of failure of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority or action or non-action by, or failure to

obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due diligence and foresight such Party could not reasonably have been expected to avoid and which by exercise of due diligence it shall be unable to overcome. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it is involved. Any Party rendered unable to fulfill any obligation under this MOU by reason of uncontrollable force shall give prompt written notice of such fact to the other Party and shall exercise due diligence to remove such inability with all reasonable dispatch.

9. Notices.

Any notice, demand or request pursuant to this MOU herein shall be in writing and shall be considered properly given when delivered in person, sent by either registered or certified mail, acknowledged by an email with a delivery and/or read receipt attached, or sent by national overnight delivery service, postage prepaid addressed to the other Party's principal offices.

9.1 Notices to the State shall be sent to: State of Colorado, Governor's Office of Information Technology, Communication Services, 601 East 18th Avenue, Suite 250, Denver, CO 80203

9.2 Notices to (Receiving Agency) shall be sent to: City of Pueblo, Information Technology Dept., 200 South Main, Pueblo, Colorado 81003

10. Binding Obligations.

All of the obligations set forth in this MOU shall bind the Parties and their successors and assigns, and such obligations shall run with the Parties' rights, titles, interests, and with all of the interests of each Party to this MOU.

11. Fund Availability

Financial obligations of the Receiving Agency and State payable after the first fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

12. Future Obligations.

Receiving Agency shall not plan for, or otherwise expect the State to provide future system wide **software** upgrades beyond the **software** upgrade defined in this MOU. State is not obligated in any way to provide future **software** upgrades to Receiving Agency DTR system components.

13. No Third Party Beneficiary Rights.

Except as otherwise stated herein, this MOU shall inure to the benefit of, and be binding only upon the parties hereto and their respective successors and assigns. No third party beneficiary rights or benefits of any kind are expressly or impliedly provided herein.

14. Governing Law

This MOU shall be construed and interpreted in accordance with the laws of the State of Colorado.

THE PARTIES HERETO HAVE EXECUTED THIS MOU

* Persons signing for each Party hereby swear and affirm that they are authorized to act on their behalf and acknowledge that each Party is relying on their representations to that effect.

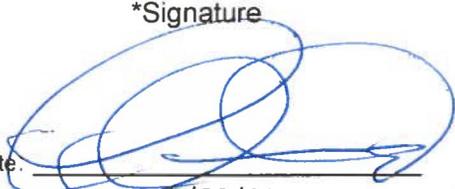
<p style="text-align: center;">CITY OF PUEBLO</p> <p>By: Stephen G. Nawrocki Title: President of the City Council</p> <hr/> <p style="text-align: center;">*Signature</p>  <p>Date: <u>7/22/2013</u></p>	<p style="text-align: center;">GOVERNOR'S OFFICE OF INFORMATION TECHNOLOGY</p> <p>Kristin Russell, Secretary of Technology and State Chief Information Officer</p>  <hr/> <p>By: Brenda Berlin – Chief Financial Officer</p> <p>Date: <u>10/9/13</u></p>
<p>ATTESTED BY:  City Clerk</p>	<p style="text-align: center;">LEGAL REVIEW</p> <p>John W. Suthers, Attorney General</p> <p style="text-align: center;">By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

Exhibit A

RECEIVING AGENCY SITES AND DISPATCH CENTER/S

At the Receiving Agency Radio Frequency (RF) site/s or dispatch center/s the Receiving Agency shall:

1. Assist in coordination with the State Public Safety Communications Network (PSCN) engineers and technical staff and their associates for the installation of DTR system **software** upgrades at Receiving Agency RF sites and facilities.
2. Authorize State PSCN technical staff and their agents and/or associates required access to Receiving Agency RF sites and facilities for the purpose of installation, testing and monitoring of **software**.
3. Receiving Agency remains responsible for locally owned equipment.
4. Receiving Agency agrees to the cost table defined below.

DTR 7.5-7.14 Upgrade Quote for Sale Pricing Breakdown for City of Pueblo			
Description	Qty	Price per Site/ Channel/ Position	Totals
RF Channels	24	\$3,246	\$77,904
MCC 7500 Console Operator Positions	8	\$13,045	\$104,360
IP Logger	1	\$68,238	\$68,238
TOTAL			\$250,502

At the Receiving Agency RF site/s and/or dispatch centers the State shall:

1. Make every effort to schedule and make ample notification of not less than twenty-four (24) hours to Receiving Agency of the date/s and time/s State and their agents may be expected to be on site to perform the necessary work to effect the upgrade of the Receiving Agency components of the DTR system.
2. Purchase and provision for all necessary personnel and equipment required for installation, testing and monitoring of DTR system **software** upgrades from SR 7.5 to SR 7.14.
3. In order to maintain system software consistency, the State remains wholly responsible for all software maintenance, including the authorization to push software patches and security updates to all DTR system components.