

## **AGREEMENT**

**THIS AGREEMENT**, by and between the **CITY AND COUNTY OF DENVER**, a Colorado home rule municipality, hereinafter referred to as the “**City**”, and the **WEST METRO FIRE PROTECTION DISTRICT**, a fire protection district and political subdivision of the State of Colorado, with offices located at 433 South Allison Parkway, Lakewood, CO 80226, hereinafter referred to as “**West Metro**,” is made and entered as of the date set forth on the City’s signature page below.

### **RECITALS**

**WHEREAS**, the City owns and operates Red Rocks Park and Amphitheatre (“Red Rocks”); and

**WHEREAS**, West Metro was established to provide fire protection, emergency medical, rescue, and ambulance services to the citizens within the West Metro Fire Protection District; and

**WHEREAS**, the City would like West Metro to provide certain emergency medical services when requested for events at Red Rocks; and

**WHEREAS**, West Metro is willing to provide such emergency medical services at Red Rocks; and

**WHEREAS**, the parties’ desire to establish an agreement to provide for the provision of certain emergency medical services at Red Rocks.

**NOW, THEREFORE**, in consideration of the premises above described and the mutual performance of the covenants, agreements, and promises set forth hereinafter, the parties agree as follows:

**I. CITY REPRESENTATIVE.** The City's Director of Denver Arts & Venues (the “**Director**”) is the official City Representative and directs all services under this Agreement. Communication between the City and West Metro shall be directed through the Venue Director at Red Rocks (“**Venue Director**”) or such other representative as the Director shall designate.

**II. DEFINITIONS.** For the purposes of this Agreement, and any exhibits hereto, the definitions of the following words or terms of art shall be controlling:

**A. “Advanced Life Support” or “ALS”** means emergency medical technician-paramedic level service, the highest attainable level of pre-hospital emergency medical care and treatment under the Colorado Board of Health Rules.

- B.** “**Ambulance**” means any surface vehicle equipped to transport injured, sick, wounded, or disabled persons in either an emergency (*i.e.*, with lights and siren operating) or non-emergency mode, and staffed to provide emergency and non-emergency medical services for such persons.
- C.** “**Basic Life Support**” or “**BLS**” means emergency medical technician-basic level service, which includes vital signs assessment, oxygen administration, non-invasive airway management, artificial ventilation, cardiopulmonary resuscitation, extrication, axial immobilization, extremity splinting, hemorrhage control, wound care, and bandaging.
- D.** “**Emergency Medical Services Incident**” means an occurrence whereby there is either an observed potential need for or an expressed request for immediate medical response and/or assistance by Advance Life Support and/or Basic Life Support equipment and personnel.
- E.** “**Response**” means the response of West Metro's equipment and personnel to handle an Emergency Medical Services Incident within Red Rocks.
- F.** “**Patient**” means any person with any degree of injury, illness, or complaint.

**III. WEST METRO RESPONSE OBLIGATIONS WITHIN RED ROCKS PARK & AMPHITHEATRE.**

**A.** Effective May 1, 2017, West Metro shall provide all ALS and BLS Response services within the amphitheater, parking lot, and roads of Red Rocks. West Metro shall provide Response at events designated by the Venue Director within Red Rocks in full compliance with the terms and conditions of this Agreement.

**B.** Response is hereby deemed to be approved by the City’s governing body, and shall require no further approval by the responsible officials of the City.

**C.** Both parties hereto agree to limit the scope of this Agreement to Response of Advanced Life Support Ambulances.

**D.** Only those West Metro ALS Ambulances which are staffed with at least two (2) Colorado-certified Emergency Medical Technicians (-Basic, -Intermediate, or - Paramedic) with at least one (1) member of such staff being a Colorado-certified Emergency Medical Technician-Paramedic shall respond to Response Incidents governed by this Agreement.

**E.** Both parties agree that a Basic Life Support (BLS) first response may be used in

addition to an ALS when in accordance with West Metro's dispatch protocol.

**F.** West Metro shall appoint one contact person who shall communicate with the Venue Director, or his designee, concerning event scheduling and staffing.

**G.** West Metro shall staff paramedics and emergency medical technician- basic (EMT-B) at all Red Rocks events response to scheduling and staffing from the Venue Director. A ratio of no more than one (1) EMT-B per paramedic shall be staffed at any event. West Metro shall stock and re-supply all medical materials in the Red Rocks first aid room and provide cardiac monitors, suction units, and ALS medical kits for each event.

**H.** West Metro personnel shall remain at all Red Rocks events until cleared by the Venue Director to leave the area or until all parking lots have been cleared, whichever occurs first.

**IV. PATIENT CARE.** West Metro agrees to operate under the Denver Metropolitan Paramedic Protocols with respect to patient assessment, treatment, drugs, and procedures. Destination decisions shall be made by the senior paramedic aboard the Ambulance transporting the patient in accordance with West Metro's internal operational policies and procedures.

**V. PAYMENT.**

**A. Fees:** The City agrees to pay West Metro, and West Metro agrees to accept as full total compensation for the services provided under this Agreement, a fee at a rate of Forty-Five and No/100 Dollars (\$45.00) per hour per paramedic, plus One Hundred and No/100 Dollars (\$100.00) per event.

**B. Reimbursable Expenses:** There are no reimbursable expenses allowed under this Agreement.

**C. Invoicing:** West Metro shall submit a monthly statement to the Venue Director which shall delineate the number of hours spent on specific assigned matters with a description of the services rendered. West Metro shall be entitled to bill for the actual time spent by the paramedics, plus a half hour each for travel time. These statements are to be submitted by the fifteenth (15<sup>th</sup>) day of the month following the month in which the work was performed. The City's Prompt Payment Ordinance, §§ 20-107 to 20-118, D.R.M.C., applies to invoicing and payment under this Agreement.

**D. Maximum Contract Amount:**

(1) Notwithstanding any other provision of this Agreement, the City's maximum

payment obligation will not exceed Eight-Hundred Fifty Thousand and No/100 Dollars (\$850,000.00) (the “**Maximum Contract Amount**”). The City is not obligated to execute an agreement or any amendments for any further services, including any services performed by West Metro beyond that specifically described in this Agreement. Any services performed beyond those described in this Agreement are performed at West Metro’s risk and without authorization under this Agreement.

(2) The City’s payment obligation, whether direct or contingent, extends only to funds appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of this Agreement. The City does not by this Agreement irrevocably pledge present cash reserves for payment or performance in future fiscal years. This Agreement does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

**E.** The City is not liable hereunder for payments on account of patient transports, or for West Metro activities at Red Rocks at times other than designated events.

**VI. TERM AND TERMINATION.** This Agreement shall commence on May 1, 2017 and shall terminate April 30, 2020. This Agreement may be terminated by West Metro or the City upon thirty (30) days written notice.

**VII. DATA AND RECORDS.** Both parties shall keep and maintain books, records, accounts and other documents (hereinafter collectively referred to as “records”) that are sufficient to accurately and completely reflect the operations of the parties in reference to this Agreement. Both parties agree that, to the extent permitted by law, any duly authorized representative of the other party shall, until the expiration of four (4) years following termination of this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of the other party involving transactions related to this Agreement. Such records shall include, but not be limited to, receipts, memoranda, invoices, vouchers and accounts of every kind pertaining to the performance of work and services under this Agreement. Both parties shall, upon request of the other party, make such records available for inspection. Except as limited by Colorado and federal law and regulation governing confidentiality of patient records and patient privacy protections, West Metro shall, upon request of the Auditor of the City and County of Denver (hereinafter “**Auditor**”), make such records available for inspection and copying in the Denver metropolitan area.

**VIII. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, (HIPAA).**

Both parties shall (i) not use or further disclose information other than as permitted or required by this Agreement; (ii) not use or further disclose information in a manner that would violate the requirements of the HIPAA regulations; (iii) use appropriate safeguards to prevent use or disclosure other than as provided in this Agreement; (iv) report to the other party any use or disclosure not provided by this Agreement; (v) ensure that any subcontractors and agents to which the parties may provide protected health information agree to the same restrictions and conditions as apply to the parties; (vi) make appropriate health information available upon individual request as appropriate; (vii) make its practices, books, and records relating to the use and disclosure of protected health information available to the U.S. Department of Health and Human Services; and (viii) authorize the other party to terminate this Agreement if one has violated a material term.

**IX. MEDICAID CLAUSE.** Except as limited by Colorado and federal law and regulation governing confidentiality of patient records and patient privacy protections, West Metro agrees to allow the Secretary of the Department of Health and Human Services and the Comptroller General, and the City Auditor, or their duly authorized representatives, access upon request to this Agreement and to the books, documents and records of West Metro that are necessary to verify the nature and extent of costs of services furnished under this Agreement. West Metro also agrees that if it carries out any duties of this Agreement through a subcontractor, with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12)-month period with a related organization, the subcontract must contain a clause to the effect that the related organization's subcontract must contain a clause to the effect that the related organization must make available, upon written request, to the Secretary, or upon request to the Comptroller General, or their duly authorized representatives, the subcontract and the books, documents and records of the related organization that are necessary to verify the nature and extent of the costs. Such access shall be until the expiration of four (4) years after the services are furnished under this Agreement.

**X. STATUS OF THE PARTIES.** The parties acknowledge that they operate independently. Neither West Metro, nor any of its agents, representatives, employees, or officers shall be considered agents, representatives, employees, or officers of the City. Neither the City, nor any of its agents, representatives, employees, or officers shall be considered agents,

representatives, employees, or officers of West Metro. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the parties. Each party shall be liable for its own debts, obligations, acts and omissions. Nothing contained in this Agreement, and no performance under this Agreement by personnel of the parties hereto shall, in any respect, alter or modify the status of officers, agents, representatives, or employees of the respective parties for purposes of worker's compensation or other benefits, entitlements, pensions, levels or types of training, internal discipline, certification, or rank procedures, methods, or categories, or for any purpose, condition or requirements of employment.

**WEST METRO UNDERSTANDS THAT IT IS NOT ENTITLED TO UNEMPLOYMENT BENEFITS, WORKERS' COMPENSATION BENEFITS, OR ANY FRINGE BENEFITS FROM THE CITY. THE CITY UNDERSTANDS THAT IT IS NOT ENTITLED TO UNEMPLOYMENT BENEFITS, WORKERS' COMPENSATION BENEFITS, OR ANY FRINGE BENEFITS FROM WEST METRO.**

**XI. DEFENSE & INDEMNIFICATION.**

**A.** West Metro hereby agrees to defend, indemnify, and hold harmless City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Agreement (“**Claims**”), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of West Metro or its subcontractors either passive or active, irrespective of fault, including City’s concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**B.** West Metro’s duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. West Metro’s duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/ or claimant alleges that City’s negligence or willful misconduct was the sole cause of claimant’s damages.

**C.** West Metro will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims

including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Agreement shall in no way lessen or limit the liability of West Metro under the terms of this indemnification obligation. West Metro shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Agreement.

**XII. INSURANCE.** West Metro warrants and represents that it either self-insures or has obtained liability insurance in amounts at least up to the limits of liability as specified in the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*

**XIII. NOTICES.** When this Agreement provides for notice, the notice shall be given in writing and shall be sent by U.S. Postal Mail, or by personal delivery to the parties at the following addresses:

**If to the City:**

Director, Denver Arts & Venues  
144 W. Colfax Ave.  
Denver, CO 80202

**If to West Metro:**

Jeremy Metz  
433 South Allison Parkway  
Lakewood, Colorado 80226

**With copies to:**

Venue Director, Denver Arts & Venues  
4600 Humboldt Street  
Denver, CO 80216

Finance Director, Denver Arts & Venues  
City and County of Denver  
1345 Champa Street  
Denver, Colorado 80204

Said notice shall be delivered personally during normal business hours to the appropriate office above, or mailed by the U.S. Postal Service. Mailed notice shall be deemed effective three (3) days after deposit with the U.S. Postal Service. The persons or addresses set forth above may be changed at any time by written notice in the manner provided herein.

**XIV. CONFLICT OF INTEREST.**

a. No employee of the City shall have any personal or beneficial interest in the services or property described in the Agreement. West Metro shall not hire, or contract for services with, any employee or officer of the City that would be in violation of the City's Code of Ethics, D.R.M.C. §2-51, et seq. or the Charter §§ 1.2.8, 1.2.9, and 1.2.12.

b. West Metro shall not engage in any transaction, activity or conduct that would result in a conflict of interest under the Agreement. West Metro represents that it has disclosed any and all current or potential conflicts of interest. A conflict of interest shall include transactions, activities or conduct that would affect the judgment, actions or work of West Metro by placing West Metro's own interests, or the interests of any party with whom West Metro has a contractual arrangement, in conflict with those of the City. The City, in its sole discretion, will determine the existence of a conflict of interest and may terminate the Agreement if it determines a conflict exists, after it has given West Metro written notice describing the conflict.

**XV. NO THIRD PARTY BENEFICIARY.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person. It is the express intention of the Parties that any person other than a party to this Agreement receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**XVI. VENUE, GOVERNING LAW.** This Agreement is entered into and shall be governed and construed according to the laws of the State of Colorado, without regard to conflicts of law. For purposes of this Agreement, West Metro hereby submits to the personal jurisdiction of courts situated in the City and County of Denver, State of Colorado, and waives any right it might have to object to the venue of any proceeding at law or in equity, or that such proceeding has been brought in an inconvenient forum.

**XVII. NO DISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this Agreement, the parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, or physical or mental disability; and further agrees to insert the



foregoing provision in all subcontracts hereunder.

**XVIII. ASSIGNMENT; SUBCONTRACTING.** West Metro shall not voluntarily or involuntarily assign any of its rights or obligations, or subcontract performance obligations, under this Agreement without obtaining the Director's prior written consent. Any assignment or subcontracting without such consent will be ineffective and void, and will be cause for termination of this Agreement by the City. The Director has sole and absolute discretion whether to consent to any assignment or subcontracting, or to terminate the Agreement because of unauthorized assignment or subcontracting. In the event of any subcontracting or unauthorized assignment: (i) West Metro shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any sub-consultant, subcontractor or assign.

**XIX. NO WAIVER OF RIGHTS.** In no event shall performance by either party hereunder following any breach of one or more covenants, provisions, or conditions of this Agreement by the other party, constitute or be construed to be a waiver by the non-breaching party of any such breach or any default which may then exist on the part of the other party. The performance when any such breach or default shall exist shall not impair or prejudice any right or remedy available to such party with respect to such breach or default. No assent, expressed or implied, to any breach of any one or more covenants, provisions, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

**XX. PARAGRAPH HEADINGS.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions thereof.

**XXI. AGREEMENT AS COMPLETE INTEGRATION AND AMENDMENT.** This document, together with any Exhibits attached hereto, constitutes the full understanding of the parties with respect to the subject matter hereof, and a complete and exclusive statement of the terms of their agreement; this Agreement supersedes all prior written and oral agreements regarding the subject matter hereof. No terms, conditions, understandings or agreements purporting to amend, modify, vary or waive the terms of this Agreement shall be binding unless made in writing and signed by an authorized representative of each party. Any Exhibit to this Agreement is hereby incorporated into and made part of this Agreement. In case of any conflict between this Agreement and any Exhibit, the terms of this Agreement shall prevail over the

Exhibit.

**XXII. NO AUTHORITY TO BIND CITY TO CONTRACTS.** West Metro lacks any authority to bind the City on any contractual matters. Final approval of all contractual matters that purport to obligate the City must be executed by the City in accordance with the City's Charter and the Denver Revised Municipal Code.

**XXIII. LEGAL AUTHORITY.** West Metro represents and warrants that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into the Agreement. Each person signing and executing the Agreement on behalf of West Metro represents and warrants that he has been fully authorized by West Metro to execute the Agreement on behalf of West Metro and to validly and legally bind West Metro to all the terms, performances and provisions of the Agreement. The City shall have the right, in its sole discretion, to either temporarily suspend or permanently terminate the Agreement if there is a dispute as to the legal authority of either West Metro or the person signing the Agreement to enter into the Agreement.

**XXIV. NO CONSTRUCTION AGAINST DRAFTING PARTY.** The parties and their respective counsel have had the opportunity to review the Agreement, and the Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.

**XXV. COUNTERPARTS OF THIS AGREEMENT.** This Agreement may be executed in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

**XXVI. EXECUTION OF AGREEMENT.** This Agreement is expressly subject to, and shall not be or become effective or binding on either party until fully executed by all signatories of the City and West Metro.

**XXVII. COMPLIANCE WITH ALL LAWS.** West Metro shall perform or cause to be performed all services in full compliance with all applicable laws, rules, regulations and codes of the United States, the State of Colorado; and with the Charter, ordinances, rules, regulations and Executive Orders of the City and County of Denver.

**XXVIII. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS.** West Metro consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or

enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

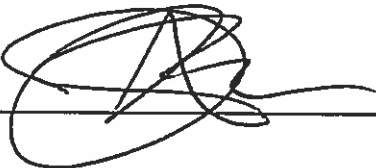
By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: THTRS-201733988-00

Contractor Name: West Metro Fire Protection District

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

Name: Jeremy Metz  
(please print)

Title: Division Chief of EMS  
(please print)

ATTEST: [if required]

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

Name: Mark Krupf  
(please print)

Title: Deputy Chief  
(please print)

