

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 14
Series of 2014

TITLE: A RESOLUTION APPROVING A COLLABORATIVE DATA SHARING TRIAL AGREEMENT BETWEEN THE NUMERICA CORPORATION AND THE CITIES OF ARVADA AND WHEAT RIDGE, COLORADO

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), acting through its City Council ("Council"), is a home rule municipality with statutory and constitutional authority to enact ordinances and enter into agreements for protection of the public health, safety and welfare; and

WHEREAS, the Wheat Ridge Police Department desires to play an active role in the development of a sophisticated crime analysis software system, known as Lumen, being developed by the Numerica Corporation; and

WHEREAS, the Lumen software system is a sophisticated analytics computing platform being developed for use by Colorado law enforcement agencies in the investigation and analysis of criminal activity; and

WHEREAS, the Numerica Corporation has proposed a collaborative data sharing agreement concerning Lumen between the Wheat Ridge Police Department and the Arvada Police Department; and

WHEREAS, the Council finds that it is desirable to enter into the proposed agreement to permit the Wheat Ridge Police Department's continued participation in the development of a new tool in the investigation and analysis of criminal activity.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, as follows:

Section 1. The attached Numerica Corporation Collaborative Lumen Trial Agreement between the City and the Numerica Corporation and the cities of Arvada and Wheat Ridge is hereby approved. The Mayor and City Clerk are authorized to execute the same.

Section 2. This Resolution shall be effective immediately.

DONE AND RESOLVED this 10th day of February, 2014.

ATTEST:



Janelle Shaver, City Clerk





NUMERICA CORPORATION DATA SHARING AGREEMENT

This Numerica Corporation Collaborative Lumen Trial Agreement (the "Agreement") is entered into this ___ day of January, 2014 (the "Effective Date"), between Numerica Corporation ("Numerica"), a Colorado corporation, and the Colorado Cities of Arvada and Wheat Ridge (the "Cities") (each a "Party," and collectively, with Numerica, the "Parties").

1. **BACKGROUND.** Exclusively at private expense, Numerica has developed and maintains the Lumen software system ("Lumen"), a sophisticated internet cloud-based analytics computing platform for use by Colorado law enforcement agencies in the investigation and analysis of criminal activity. Lumen collects Law Enforcement Data (as defined below) from disparate data streams, and then filters and analyzes the resulting information in ways that result in a more useful work product than could be achieved by analyzing the data manually or in its separate states. Each of the Cities has entered into separate no-cost Trial Agreements (as defined below) with Numerica, under which Numerica has provided each City with access to that particular City's Law Enforcement Data through the Lumen platform.
2. **PURPOSE.** Lumen is ultimately intended to provide law enforcement agencies across Colorado and the nation with access to Law Enforcement Data maintained by other jurisdictions in order to provide a more complete rendering of relevant data and to support analytics based on events that are not always bound by jurisdictional limits. Under the current Trial Agreements, however, no City has access to Law Enforcement Data maintained by other Cities, and Numerica is not authorized to grant access to such data to any third parties. This multi-party Agreement permits Numerica to share the Law Enforcement Data of the Cities among each other under the terms of the existing Trial Agreements and grants the Cities access to all other Cities' Law Enforcement Data through Lumen. The Cities will thereby obtain access to a significantly larger pool of Law Enforcement Data solely for use in the investigation and prosecution of criminal activity, and Numerica will use this new "mixed" data stream to – exclusively at private expense – continue testing and refinement of Lumen. The Cities will continue to utilize Lumen on a trial basis under the pre-existing terms of the Trial Agreements that are not altered by this Agreement, and the Cities agree to provide feedback regarding Lumen's functionality. In accordance with this Purpose, this Agreement governs the Parties' rights and obligations concerning Numerica's provision of – and the Parties' access to and use of – Law Enforcement Data through Lumen.
3. **DEFINITIONS.** For purposes of this Agreement, the following terms are defined as follows:
 - (a) "CJIS Security Policy" means the Federal Bureau of Investigation Criminal Justice Information Services Security Policy, v.5.2 (CJISD-ITS-DOC-08140-5.2) dated August 9, 2013, as may be from time to time amended.
 - (b) "Criminal Justice Information" shall be defined as set forth in the CJIS Security Policy.
 - (c) "Criminal Justice Records" shall be defined as set forth in C.R.S. § 24-72-302(4), as may be amended from time to time. All Law Enforcement Data transmitted between the Parties pursuant to this Agreement constitutes Criminal Justice Records.
 - (d) "Law Enforcement Data" includes, but is not necessarily limited to, Criminal Justice Information; Criminal Justice Records; calls for service information; incident data (including original narrative reports); arrest data; and Personally Identifiable Information.
 - (e) "Lumen" means the collective hardware, software, and applications maintained or installed by Numerica and used by the City to access, review, and search Law Enforcement Data provided under this Agreement.
 - (f) "Personally Identifiable Information" shall be defined as set forth in the CJIS Security Policy.
 - (g) "Trial Agreements" means the current agreements between Numerica and the Cities regarding the Cities' use of and access to Lumen: Collectively (1) the agreement "Concerning A Collaborative Effort to Analyze Crime Information" between Numerica and Arvada, dated April 10, 2012; and (2) the "Collaborative Lumen Trial Agreement" between Numerica and Wheat Ridge, dated July 22, 2013.
4. **TERM.** This Agreement shall take effect on the Effective Date and shall remain in effect until terminated pursuant to Paragraph 10. Notwithstanding the foregoing, the expiration of the Term will not supersede the rights and obligations of the Parties under Paragraph 6, 12, and 13.



5. **AGREEMENT TO SHARE LAW ENFORCEMENT DATA.** Each City hereby authorizes Numerica to provide other Cities party to this Agreement with access to the City's Law Enforcement Data currently shared with Numerica. Such data may be used in conformance with applicable state and federal laws. Each Party reserves the right to except any Law Enforcement Data from Lumen. Further, each Party reserves the right to except any Law Enforcement Data provided by it under its respective Trial Agreement from the data sharing provisions of this Section 5 by designating such data as restricted in Lumen (instructions to do so will be provided by Numerica). Nothing in this Section shall be construed to abrogate or otherwise affect the ability of any Party to control the Law Enforcement Data that is submitted by it to Numerica for use on Lumen as an initial matter under its respective Trial Agreement.
6. **TERMS OF USE OF SHARED DATA.** The Parties expressly recognize that certain Law Enforcement Data provided by the Parties pursuant to this Agreement is confidential and sensitive. The Parties also agree that security of the Law Enforcement Data is a paramount concern of the Parties and is necessary in order to comply with applicable law and to protect the public's welfare and safety. Accordingly, the Parties shall maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the City's Law Enforcement Data linked to Lumen, as specified below.
 - (a) Numerica will only provide Law Enforcement Data shared under this Agreement pursuant to the terms of the Trial Agreements with the respective Cities, and this Agreement does not provide the Cities with any guarantee of access to any Law Enforcement Data beyond that provided for under the Trial Agreements. The Parties recognize that any use of Lumen and access to shared Law Enforcement Data under this Agreement in no way impinges the rights or obligations of the Parties under the Trial Agreements (including, by way of example but without limitation, license and usage restrictions, confidentiality provisions, limitations on warranties and liability, and indemnification provisions), which are not amended by this Agreement and shall control Numerica's distribution of all Law Enforcement Data under this Agreement, except to the extent this Agreement is patently inconsistent with the Trial Agreements, in which case the terms of this Agreement shall control. Accordingly, the Parties agree that this Agreement should be read together with the relevant Trial Agreement as it pertains to Numerica's provision of Law Enforcement Data via Lumen to a particular City and the City's access to and use of such data.
 - (b) The Parties mutually agree that they will treat all Criminal Justice Records shared under this Agreement in strict conformance with the provisions of the Colorado Criminal Justice Records Act portion of the Colorado Open Records Act ("CORA"), except that Numerica is in no way deemed to be a custodian of criminal justice information or records for purposes of releasing under CORA any criminal justice records to which Numerica has access under this Agreement.
 - (c) Notwithstanding any other provision in this Agreement, if there occurs any change of law involving the transmission, transcription, and/or use of Criminal Justice Information, Criminal Justice Records, or Personally Identifying Information, that results in a material effect on the legitimate expectations of any Party at the time such Party entered into this Agreement, all Parties agree to cooperate in making reasonable revisions to this Agreement to the minimum degree necessary in order to enable this Agreement, as revised, to fulfill to the maximum extent the legitimate expectations of all Parties.
7. **NO-COST AGREEMENT.** Monetary compensation for or by any Party is neither contemplated nor demanded. Accordingly, no monetary compensation shall be paid by any Party to any other party for any sharing of Law Enforcement Data or provision of access thereto through Lumen. However, the Parties agree that they have entered into this Agreement for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged.
8. **NO OUTSIDE BENEFICIARIES.** This Agreement is made solely for the benefit of the Parties, and the Parties expressly agree that nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.
9. **APPLICABLE LAW.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of Colorado, without regard to the principles of conflicts of law thereof. Venue for any action arising under this Agreement shall be in the appropriate court for Jefferson County, Colorado.



10. **TERMINATION.** This Agreement may be terminated (1) immediately, upon the mutual agreement (in writing) of all Parties; (2) as to a particular Party, upon written notice by that Party; or (3) immediately by Numerica, as to a particular Party, upon Numerica's reasonable determination and written notice to that Party that the Party has materially violated any term(s) of this Agreement.

11. **NOTICE.**

(a) Any and all notices required under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) mailed, postage prepaid, certified mail, return receipt requested; (iii) delivered via a nationally recognized overnight courier service; or (iv) delivered via facsimile transmission with regular mail to follow, addressed to the Party as set forth below.

<p><u>For The City of Arvada:</u> Attn: Don Wick, Chief of Police Address: 8101 Ralston Road P.O. Box 8101 Arvada, CO 80001-8101 Phone: 720.898.6665 Facsimile: 720-898-6667</p>	<p><u>For Numerica Corporation</u> Attn: Jeff Poore Address: 4850 Hahns Peak Drive, Suite 200 Loveland, CO 80538 Phone: 970-612-2311 Facsimile: 970-461-2004</p>
<p><u>For The City of Wheat Ridge:</u> Attn: Division Chief Joe Cassa Address: 7500 West 29th Avenue Wheat Ridge, CO 80033 Phone: 303.235.2933 Facsimile: 303.235.2933</p>	

(b) All notices personally delivered shall be deemed given as of the date of personal delivery. All notices mailed shall be deemed delivered as of two business days after the date postmarked. All notices deemed delivered by overnight courier, shall be deemed delivered as of one business day after date deposited with such service. All notices sent via facsimile shall be deemed delivered as of the date that the transmission is sent and confirmed as received.

12. **LIMITATION OF LIABILITY.**

(a) NUMERICA SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR OTHER INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, OR BUSINESS INFORMATION, OR FOR BUSINESS INTERRUPTION, PERSONAL INJURY OR ANY OTHER LOSSES UNDER ANY LEGAL THEORY INCLUDING CONTRACT, TORT AND/OR STRICT PRODUCT LIABILITY) ARISING FROM, OR RELATING TO, THIS AGREEMENT, AND ANY ATTACHMENT, OR ANY CITY'S USE OR INABILITY TO USE OR ACCESS SHARED LAW ENFORCEMENT DATA ON LUMEN, EVEN IF NUMERICA HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES OR LOSSES.

(b) NUMERICA WILL NOT BE RESPONSIBLE FOR ANY DELAY OR FAILURE IN PERFORMANCE FROM ANY CAUSE INCLUDING, BUT NOT LIMITED TO, LIABILITY OR DAMAGES ARISING FROM TECHNICAL FAILURE OR DATA CORRUPTION. IN NO EVENT WILL NUMERICA BE RESPONSIBLE FOR ANY DAMAGES ARISING OUT ERRONEOUS, INCOMPLETE, OR ALLEGEDLY MISLEADING DATA ACCESSED THROUGH LUMEN, OR ANY NEGLIGENCE OR RECKLESSNESS IN THE COMPILATION OR TRANSMISSION OF DATA BY OTHERS THROUGH THE LUMEN SYSTEM.

13. **GENERAL PROVISIONS.**

(a) This Agreement is the complete and exclusive statement of the agreements between the Parties, and, unless otherwise noted in this Agreement, this Agreement supersedes all prior proposals and understandings, oral



and written, relating to the subject matter hereof, except for the Trial Agreements referenced above. Descriptive headings in this Agreement are for convenience only and shall not control or affect the meaning or construction of any provisions of this Agreement. The waiver of any Party hereto of a breach or default of any of the provisions of this Agreement by another Party shall not be construed as a waiver of any succeeding breach of the same or other provisions of this Agreement, nor shall any delay or omission on the part of any Party hereto to exercise or avail itself of any right, power, or privilege that it has or may have hereunder, operate as a waiver of any such right, power, or privilege by such Party. If any of the provisions of this Agreement are held for any reason to be invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

- (b) In the event of a conflict between the terms of this Agreement, and any of the Trial Agreements, the Terms of the Trial Agreement controls as to the relationship between Numerica and that Party.
- (c) The law enforcement parties retain all protections under the Colorado Governmental Immunity Act.
- (d) Each party has designated Data Flow Manager which is responsible for the day to day management of this agreement. The Data Flow Managers shall be as follows:

For the City of Arvada: Lynn Johnson (720-898-6650)

For the City of Wheat Ridge: Joe Cassa (jcassa@ci.wheatridge.co.us, 303-235-2933)

For Numerica: Nick Coult (nick.coult@numerica.us, 970-612-2352)



IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized representatives.

City of Arvada

Numerica Corporation

Date: 2/14/14
Printed Name: Don Wick
Title: Chief of Police
Signature: [Handwritten Signature]

Date: 2/14/14
Printed Name: Jeff Poole
Title: President
Signature: [Handwritten Signature]

City of Wheat Ridge

Date: 2/10/14
Printed Name: Joyce Jay
Title: Mayor
Signature: [Handwritten Signature]