

RESOLUTION NO. 2144

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR IRNE TELECOMMUNICATIONS SERVICES.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The relocation of city operations from the existing City Hall will require several additional physical locations
2. A true and very real need exists for the data telecommunication services within and between these several locations to enable communications necessary for the effective delivery of city services,
3. Acquisition of the services under existing franchise agreements, through the Mt Hood Cable Regulatory Commission, and administration of the City of Portland Bureau of Technology Services, in compliance with Troutdale Municipal Code procurement provisions, is in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Agrees now that the City as the Customer enters into the Intergovernmental Agreement for accessing the Integrated Regional Network Enterprise ("Agreement") in order to secure cost effective data telecommunication services.

Section 2. Designates the City Manager or Finance Director (each a "City Official") or a designee of the City Official, to act on behalf of the City, and without further action by the City Council the City Official is hereby, authorized, empowered and directed to sign on behalf of the city the Agreement, and any and all other required and necessary documents to implement the terms and intent contemplated by the Agreement.


Section 3. The City Official is hereby authorized to execute, acknowledge and deliver in the name and on behalf of the City, the Agreement which is in substantial conformity with Exhibit A of the Staff Report, and with such changes as necessary to reflect the specific equipment, services and configurations terms applicable, and such other changes as the signing officer shall determine to be advisable.

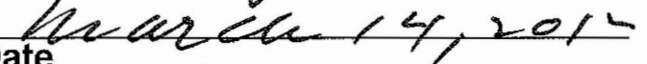
Section 4. Further, the City Official are authorized to execute, acknowledge and deliver in the name and on behalf of the City any other agreement, work order, service change orders, instrument, certificate, representation, addendums, supporting and implementing documents, and to take any other action as may be advisable, convenient, necessary, or appropriate to give full force and effect to the terms and intent of the Agreement, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 5. The Finance Director is authorized to disburse funds, subject to annual appropriations, as necessary in payment of the monthly service charges, and is further directed to implement all such actions necessary to ensure budgetary compliance.

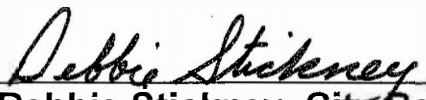
Section 6. This Resolution shall take effect upon adoption.

YEAS: 7
NAYS: 0
ABSTAINED: 0



Mayor Jim Kight


Date



Debbie Stickney, City Recorder
Adopted: March 13, 2012

**INTERGOVERNMENTAL AGREEMENT
For IRNE TELECOMMUNICATIONS SERVICES**

CITY OF TROUTDALE, OREGON

Contract No. 30002576

This Agreement is between the **City of Portland**, a municipal corporation of the State of Oregon, and its successors or assigns (hereafter called "City"), and the **City of Troutdale, Oregon** (Customer). This Agreement may refer to the City and Customer individually as a Party, or collectively as the Parties.

Recitals

WHEREAS, the Integrated Regional Network Enterprise (IRNE) is a City initiative to provide very high bandwidth, high reliability and highly secure telecommunications Services for the City of Portland; and

WHEREAS, the City created IRNE to serve other local jurisdictions, State and Federal agencies, educational institutions and public safety providers in the region; and

WHEREAS, Customer wishes to enter into an intergovernmental agreement with the City for access to IRNE Services; and

WHEREAS, the City through its Bureau of Technology Services was authorized by City Council on May 24, 2000 (Resolution # 35888) to negotiate Intergovernmental Agreements with other local jurisdictions, State and Federal agencies, educational institutions and public safety providers in the region for IRNE Services; and

WHEREAS, this Intergovernmental Agreement is authorized pursuant to Chapter 190.110 and 283.110 of Oregon Revised Statutes and Section 2-105 (a) 4 of the Charter of the City of Portland; and

WHEREAS, the City's Chief Technology Officer was authorized by City Council through Ordinance No. 185198 to execute and amend Intergovernmental Agreements for IRNE Services;

NOW THEREFORE, THE PARTIES AGREE:

1. Term and Renewal.

1.1 Unless terminated sooner under the provisions of this Agreement, the term of this Agreement shall be for five years, from **March 15, 2012** ("Effective Date"), to **March 14, 2017**.

1.2 This Agreement may be extended or renewed by written Amendment for additional periods, such periods to be determined at time of extension or renewal, but in no case shall the aggregate of the initial term and renewals exceed ten (10) years. Either Party may request extension or renewal; however, the

request for extension or renewal shall be in writing and provided to the other Party at least ninety (90) days prior to expiration of the term to be extended or renewed.

1.3 Extension or renewal shall be conditioned upon: (1) availability of IRNE facilities; (2) continued offering of the IRNE Services by the City; and (3) the Parties reaching agreement on terms. At least ninety (90) days prior to expiration of the Term of this Agreement, the Parties shall commence negotiations if they desire to continue IRNE Services under mutually acceptable terms and conditions. However, nothing binds or requires the City to continue to supply IRNE Services, or Customer to continue to purchase IRNE Services after expiration or termination of this Agreement.

2. Project Managers.

2.1 The City's Project Manager for this Agreement shall be the City's Manager of Communications. The City Project Manager may appoint additional project managers.

2.2 Customer's Project Manager shall be Erich Mueller. The Customer's Project Manager may appoint additional project managers.

3. Purpose. Customer warrants that the IRNE Services provided under this Agreement are for use by and for Customer for the conduct of its official business. Customer shall not resell, barter or share the IRNE Services to or with any commercial entity.

4. Amendments. The provisions of this Agreement shall not be altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement signed by authorized representatives of the Parties.

5. Telecommunications Services Order Process.

5.1 The City offers and provides IRNE Services as set forth in the published Catalog of IRNE Services ("Catalog"), a copy of which is posted online at <http://www.portlandonline.com/bts/index.cfm?c=34831> and is incorporated by reference hereto in its entirety. This Catalog is subject to future updates and changes and shall remain dynamic.

5.2 Customer may request any IRNE Service, provided that it is available to Customer's premises, and provided that Customer agrees to pay all construction, installation and recurring charges for the IRNE Services as described in the Order. IRNE Services shall be provided under the specific terms and conditions as detailed and described in this Agreement and the Catalog.

5.3 Interfaces and pricing schedules are described in the published Catalog. Customer shall indicate its requirements for interfaces in its Request for Service(s) ("Request").

5.4 Customer shall submit its written Request to the City Project Manager describing the type of Service requested, the installation date requested, and the interface requested. The City Project Manager shall confirm receipt of the Request in writing within ten (10) business days. The IRNE Project Manager shall subsequently provide a price quotation ("Quotation") including recurring charges, franchise fees, non-recurring charges, installation charges, construction charges, and any other cost, to Customer. The City Project Manager shall also provide an installation date and Service due date to the Customer at this time.

5.5 Once the details of the Request are finalized by both Parties, the City will issue a written Order for Services ("Order") on City letterhead. The Order shall identify the location for Services, dates of Service,

Service description, and costs, both recurring and one-time. Customer shall indicate its acceptance by returning the Order, signed by an authorized person, to the City. Work to be performed by the City and Customer to install or operate the IRNE Services shall be as described in the Order. Orders for Services shall be priced and subject to the Catalog version in effect as of the date such Order shall be completed.

5.6 If engineering work and/or construction is required before an Order can be filled for Customer, the City Project Manager shall instead notify Customer in writing within ten (10) business days of receipt of the Request, that the Request cannot be filled without engineering and construction work. In this instance, the City Project Manager shall provide to Customer a written engineering and construction cost estimate. If Customer wishes to proceed with the engineering and construction work, the City shall provide a Quotation that includes the engineering or construction work and costs identified by the City as necessary to provide the Service requested. Once the City Project Manager has received written acceptance of the Quotation for the engineering and construction costs, the City Project Manager shall notify Customer in writing of its ability to provide a due date for Service delivery and issue an Order. Engineering or construction work and costs may be included in the Quotation and Order for Services, or in a separate Quotation or Order.

5.7 If the City is unable to provide the Service to Customer in a timely manner, or the Service delivery date is unacceptable to Customer, Customer may cancel the Request or Order in writing, or the Parties may modify the existing Order to show a mutually agreed Service delivery date.

5.8 The City shall make every effort to meet the Service delivery date to Customer that is quoted for the Order. However, construction delays, difficulty in contracting for labor or materials, permit availability or other construction or engineering issues may occur which are out of the control of the City. If the City expects a delay, it shall promptly notify Customer in writing and revise the Order delivery date. Within ten (10) business days of notice of delay, Customer shall either accept the delay in writing or cancel the Order. Customer agrees that when construction, engineering or other issues that affect Service delivery occur, the City shall not be held responsible for any damages, penalties or liability due to delays in providing the Service.

6. Revisions to Orders and Services.

6.1 The Parties agree that Customer can request changes to an Order by providing the City with requested changes in writing. Where a change can be made, the City will provide Customer with a revised Quotation and send a new Order for Customer's signature. Orders for additional Service and/or changes to existing Service and Attachments (revised equipment lists, construction details/specification,) may be added to or deleted from this Agreement without formal Amendment. Any other changes to this Agreement will be accomplished by Amendment pursuant to Section 4.0 of this Agreement.

6.2 Disconnection of Individual Services. Customer may send a Request to the City for disconnection of an individual Service. Such a Request must be received thirty (30) days in advance of the date Customer wants that particular Service disconnected. City will confirm the date to Customer in writing.

7. Not Coterminous. Orders placed under this Agreement are not required to be coterminous with the expiration of this Agreement, rather shall survive the expiration of such until completion. In these cases all provisions of this Agreement shall be considered active and in full force until the applicable Order(s) reach conclusion. In no case shall a new Order be placed by the Customer, or be accepted by the City after the expiration date of this Agreement or subsequent renewal.

8. Rates, Charges and Payment Procedures.

8.1 Services under this Agreement shall become billable as of the first installation date of IRNE Service (as evidenced by the City's records or an Activation Letter sent to Customer by the City after the installation date has occurred and Services have begun, which shall be incorporated into this Agreement by reference).

8.2 IRNE Services, franchise fees, and Universal Services Fees as appropriate, shall be billed to Customer as monthly recurring charges, or as installation, construction, engineering, equipment, or other non-recurring charges. The City shall establish the rates that form the basis of these charges. The City shall publish the rates for IRNE Services annually in the IRNE Catalog.

8.3 The City shall establish rates for IRNE Services that are tied to the term length of this Agreement. The City reserves the right to develop new rates for then existing IRNE Services and for new IRNE Services previously not in the IRNE Catalog at any time, and publish them in the IRNE Catalog. Upon publication by the City, any new Service and new rate shall be available to Customer. Rate increases for Services ordered and delivered during the term of this Agreement shall be no greater than the consumer price index as forecast and published by the City's budget office or by three percent (3%), whichever is higher, and shall occur no more frequently than annually.

8.4 At the termination of this Agreement, or at any time this Agreement is amended or extended beyond the original Term, the rates for Services ordered and delivered from that time forward shall be updated to reflect the current published rates for Services. In addition, Services ordered and delivered under the original Term, but continued under the new Term shall be billed at the new rate for those Services in effect at the time of the renewal or extension.

8.5 Customer shall pay all charges within forty five (45) calendar days of the date of the City's invoice. Interest shall be charged to late accounts as provided in Portland City Code however, in no case will the interest charged to Customer be in excess of that amount allowed under ORS 293.462. A failure to pay charges when due may also result in termination of IRNE Services as provided by Section 15 of this Agreement.

8.6 In lieu of monthly payments for recurring charges, Customer may prepay the monthly recurring charges annually on a fiscal year basis. The annual payment shall consist of the monthly recurring payment times twelve (12). For the first year, the annual payment shall consist of the monthly recurring charges pro-rated for the remainder of the then current fiscal year. For the final fiscal year, the payment shall consist of the monthly recurring charges pro-rated for the remaining term of this Agreement.

8.7 In the event Customer disputes any of the charges, Customer shall pay all undisputed charges within the forty five (45) days. Customer shall notify the City in writing of disputed charges immediately when discovered but no later than forty-five (45) days following the date on the City's invoice. The Parties shall meet and resolve the disputed charges in a timely manner. Both Parties agree to investigate any disputed amounts in an expedited fashion in an effort to resolve and settle the dispute prior to seeking any other remedies. Charges not disputed within forty-five (45) days from the date of the City's invoice shall be due and payable and no longer subject to dispute under this section.

8.8 If Customer disputes charges and does not pay such charges by the payment due date, such charges shall be subject to interest charges as provided by Portland City Code (not to be in excess of that amount allowed under ORS 293.462) unless the dispute is resolved in favor of Customer. If the disputed charges have been withheld and the dispute is resolved in favor of the City, Customer shall pay the disputed amount plus interest charges as provided by Portland City Code (not to be in excess of that amount

allowed under ORS 293.462). The disputed amounts shall be paid no later than the second billing period following the resolution of the dispute. If the disputed charges have been withheld by Customer and the dispute is resolved in favor of Customer, the City shall credit the bill of Customer for the amount of the disputed charges and any late charges already paid no later than the second billing period after the resolution of the dispute. If Customer pays the disputed charges and any applicable late charges and the dispute is resolved in favor of the City, no further action shall be required. If Customer has paid the disputed charges and any applicable late charges, the City has credited the payment to Customer's account, and the dispute is resolved in favor of Customer, the City shall credit Customer's bill for the disputed amount and the late payment charges already paid no later than the second bill payment due date after the resolution of the dispute.

8.9 The invoice received by Customer from the City shall contain the details necessary to identify the circuit or Service provided, itemized charges on the circuit or Service and Customer identifier, geographic address and billing interval. Every Service or circuit provided by the City to Customer shall have a discrete identifier on the invoice to facilitate Customer tracking of Service charges.

9. Interfaces.

9.1 At Customer premises the City shall provide a standard network interface for the type of IRNE Services provided, and as described in the Order. The City shall work with Customer to meet IRNE standards for interface, or shall propose alternatives to the standard if there is a legitimate need to do so to protect the integrity of Customer's facilities or IRNE network security. Customer shall be responsible for extending the IRNE Services from the City's interface point to its Service locations. The City may require the installation of City equipment on Customer's premises in order to provide the IRNE Services and network interface. Customer shall be responsible for providing and/or paying for such equipment, and space, environmental controls, power, and other required support for the equipment. Ownership of equipment and facilities shall be as provided in Section 11.

9.2 In the event special construction or equipment is required to provide the IRNE Interfaces to Customer premises, Customer shall be responsible for payment for those items and their installation. These charges shall be quoted to Customer at the time of Order processing as provided in Sections 5 and 6, and paid as non-recurring charges by Customer as provided by Section 8. Ownership of equipment and facilities shall be as provided in Section 11.

10. Management of the IRNE Service.

10.1 An IRNE Network Manager appointed by the City and an IRNE Partner Network Manager appointed by Customer shall manage their discrete areas associated with use of the IRNE Services. The IRNE Network Manager shall be responsible for activities relating to providing Customer with access to the IRNE Services and with maintaining the integrity of the IRNE Services. Customer Network Manager shall be responsible for any equipment provided by Customer to use the IRNE Services to transmit and receive information. The IRNE Services shall be managed by both Network Managers to optimize the joint benefit of both Parties to this Agreement. Each Party shall notify the other in writing of the contact information for its Network Manager for this Agreement within five (5) days of the Effective Date of this Agreement.

10.2 Each Party shall provide the other with a number to contact the other's Network Operations Center (NOC) 24 hours-per-day by telephone or pager. This number shall be used for reporting of troubles and repair management, and other day-to-day network management issues. Use of e-mail for non-critical communication is acceptable and encouraged.

10.3 If either Party changes Network Managers, it shall provide the other Party with prior written notification at least thirty (30)-days in advance of the change, if possible. If thirty (30) days advance notice is not possible then prior notice shall be given no later than seven (7) calendar days after the Party making the change becomes aware.

10.4 Each Party shall appoint a backup or Alternate Network Manager to act in the absence of the Network Manager. The other Party shall be notified in the same manner as provided by Sections 10.1 and 10.3 of this Agreement.

10.5 The City shall not control or be responsible for the content of information transported over the IRNE by Customer in any way.

11. Ownership of the IRNE. The City shall retain asset ownership and physical control of the IRNE, including without limitation, equipment or facilities installed on Customer's premises for the purpose of providing IRNE Services to Customer.

12. Maintenance and Operations.

12.1 The City is responsible for maintaining the IRNE network and IRNE interfaces during the Term of this Agreement. At the time of installation of IRNE equipment or Services to Customer premises, the IRNE Project Manager shall provide a diagram and listing depicting the IRNE equipment and the IRNE demarcation in Customer's premises. The cost of maintaining the IRNE network and interfaces identified on the diagram and listing as IRNE managed equipment and facilities shall be paid by the City. Customer is responsible for the operations and maintenance, and the cost of operations and maintenance, of its electronic facilities and equipment. Any equipment, interfaces, software or wiring not specifically identified on the IRNE-provided diagram and listing as the responsibility of the City shall be maintained and operated by Customer.

12.2 In the event that equipment or property is damaged as the result of work or obligations under this Agreement, Parties agree to repair or replace their own equipment or property. In the event that damage occurs to one Party's property due to any fault of the other Party or its equipment, such cost for repair, replacement or compensation shall be that of the faulty Party. The non-faulting Party shall provide written documentation to the faulty Party for such reasonable repair, replacement or compensation.

12.3 In the event of any transmission problem, the City and Customer agree to make every reasonable effort to properly troubleshoot their equipment and facilities at the end points to isolate the problem, and to participate in joint testing at any reasonable time requested by the other Party.

12.4 Customer shall attempt to isolate Service problems and determine whether the problems exist on Customer's side of the IRNE network interface before reporting the problems to the IRNE Network Operations Center (NOC).

12.5 If Customer determines that the problem likely resides on the IRNE side of the network interface, Customer shall report the problem to the IRNE NOC. The method of reporting shall be determined by the City and provided to Customer's Network Manager in writing. The City reserves the right to require a specific type of notification, for example a pager, for urgent problems during non-business hours (4:00 pm to 7:30 am on weekdays, plus weekends and holidays). The City may change the notification method at any time and shall give reasonable notification of such changes to Customer.

12.6 If the City determines that the problem likely resides with Customer's equipment or facilities, the IRNE NOC shall report the trouble to Customer's Network Manager or other designated person. Method of reporting shall be determined by Customer and provided to the IRNE Network Manager in writing.

12.7 Parties shall work cooperatively to resolve problems. This may include joint testing, joint visits to shared equipment sites, or other actions that may lead to problem resolution.

13. Site Access. The City shall have reasonable access to its equipment and facilities at Customer's premises for the purposes of performing site surveys, engineering, installation, testing, trouble resolution, upgrades, and other necessary work. The access at Customer's premises shall be in accordance with Customer's building management policies and procedures that the City has been made aware in writing; however Customer shall make every reasonable effort to accommodate City access requirements. The City Project Manager and Customer Project Manager shall define access requirements and procedures in writing in order to facilitate the site access requirements of the City.

14. Early Termination.

14.1 This Agreement may be terminated by mutual consent of the Parties. Termination by mutual consent shall be in written form stating the effective date of Termination. Either Party may terminate this Agreement upon giving written Notice of Termination to the other Party not less than six (6) months prior to the termination date which shall be set forth in the notice.

14.2 Either Party may terminate this Agreement in the event that the other Party fails to comply with all applicable federal, state (specifically Oregon Public Utility Commission) and local laws and regulations. In the event that either Party wishes to terminate under this provision, written Notice to cure shall be given to the other Party at least ninety days (90) in advance to allow time for the Parties to comply with the applicable regulations, statutes or laws. In the event that either Party has failed to comply with the applicable regulations, statutes, or laws by the end of the ninety (90) day notification periods, the non-breaching Party may terminate this Agreement immediately and no additional notice shall be required.

14.3 Except as otherwise provided by this section either Party may terminate this Agreement in the event of a breach of this Agreement by the other Party. Prior to such termination, however, the Party seeking termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within the cure period, or, within fifteen (15) days of the Notice, offered an acceptable plan to cure the breach, then the Party giving the notice may terminate this Agreement at any time thereafter by giving a written notice of termination.

15. Indemnification.

15.1 Subject to the conditions and limitations of the Oregon Constitution, Article XI, and the Oregon Tort Claims Act each Party shall indemnify the other Party against liability for damage to life or property arising from the indemnifying Party's own activities under this Agreement, provided that a Party will not be required to indemnify the other Party for any such liability arising out of the wrongful acts of employees or agents of that other Party.

15.2 Notwithstanding the foregoing defense obligations under paragraph 15.1 above, neither Party nor any attorney engaged by either Party shall defend any claim in the name of the other Party or any agency/department/division of such other Party, nor purport to act as legal representative of the other Party or any of its agencies/departments/divisions, without the prior written consent of the legal counsel of such other Party. Each Party may, at anytime at its election assume its own defense and settlement in the event that it determines that the other Party is prohibited from defending it, or that other Party is not

adequately defending its interests, or that an important governmental principle is at issue or that it is in the best interests of the Party to do so. Each Party reserves all rights to pursue any claims it may have against the other if it elects to assume its own defense.

16. Insurance.

16.1 Customer and the City either both acknowledge that they are self-insured entities and shall each be responsible for providing workers' compensation insurance as required by law; AND each shall maintain a minimum self insurance of Commercial General Liability and Business Auto Liability in the amount of \$1,000,000 with a \$2,000,000 Aggregate for each, OR maintain commercially purchased insurance at the same levels. If required by the other Party and upon execution of this Agreement and prior to any work being performed hereunder, the Parties shall provide proof of such insurance through a letter of self-insurance, and/or an insurance certificate, listing the Customer or City, their respective employees, management, and officials as additional insured. Further, should the City or Customer subcontract any of the work herein, each will require such subcontractor(s), or affiliates if not covered under the Party's respective self insurance, to obtain and keep in force for the duration of the work, insurance equal to the minimum values indicated herein.

16.2 All insurance certificate(s) shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the other Party. If the insurance is canceled or terminated prior to the completion of this Agreement, the Party whose insurance has been cancelled or terminated, at the request of the other Party, and/or their respective subcontractors, shall provide a Certificate of Insurance to show proof of a new policy with the same terms and coverage. The Parties and their respective subcontractors shall have continuous, uninterrupted coverage for the duration of this Agreement. The adequacy of the insurance shall be subject to the reasonable approval of the other Party. Failure to maintain insurance as required by this Agreement shall be cause for notice of breach and this Agreement can be terminated as set forth in Section 14.3.

17. Access to Records. The Parties shall maintain all records pertaining to this Agreement according to Oregon State public record laws following termination of this Agreement. Upon reasonable written notice, each Party shall have access to the books, documents and records of the other Party, which are related to this Agreement, for the purpose of examination, copying, and audit.

18. Compliance with Laws. In connection with each Party's activities under this Agreement, Customer and the City shall comply with all applicable federal, state and local laws and regulations.

19. Venue. This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the Parties arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

20. Notice. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving Party hereafter shall specify in writing.

If to Customer:	Erich Mueller, Finance Director City of Troutdale 104 SE Kibling Avenue Troutdale, OR 97060
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Copy to: David Ross, City Attorney
City of Troutdale
104 SE Kibling Avenue

Troutdale, OR 97060

If to the City: Vinnie Puglia, Communications Manager
Bureau of Technology Services
City of Portland
3732 S.E. 99th Avenue
Portland, OR 97266-2505

Copy to: Technology Contracts
Procurement Services
City of Portland
1120 SW 5th Avenue
Portland, OR 97204

21. **Severability.** If any provision of this Agreement is declared by a court of law to be illegal or in conflict with any law, the validity of the remaining terms, conditions and provisions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular provision held to be illegal or invalid.

22. **Subcontracting and Assignment.** The Parties shall not subcontract or assign any part of this Agreement without the prior written consent of the other Party. Prior notice of at least one hundred and twenty (120) days is required and the Parties shall not be obligated to approve of or otherwise agree with any proposed assignment or subcontracting arrangement. Unapproved subcontracts or assignments shall be void and of no force and effect. In the event an assignment or subcontracting arrangement is approved, the Party assigning or subcontracting shall remain obligated for full performance of its obligation under this Agreement, and the other Party shall incur no obligation other than its obligations under this Agreement. Any approved assignee or subcontractor shall be required to agree to fulfill all the assigned or subcontracted obligations of the assigning or subcontracting Party.

23. **Force Majeure.** The Parties shall not have breached this Agreement by failure to perform a substantial obligation under this Agreement if the failure to perform arises out of causes beyond their control and without their fault or neglect, including without limitation: fire; flood; epidemic; volcanic eruption; quarantine restrictions; strike; freight embargo; unusually severe weather; riot; acts of God, sovereign or public enemy; or war. In the event delay or default arising from these causes reasonably prevents successful performance of this Agreement, the Parties may terminate this Agreement, without penalty, upon written agreement, or the Parties may make mutually acceptable revisions to this Agreement to allow it to continue as modified.

24. **Non-Waiver.** The Parties shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

25. **Independent Contractors.** The Parties shall each be responsible for any of their own federal, state and local taxes applicable to payments under this Agreement. The Parties, and their employees and subcontractors agree that their employees and subcontractors are not employees of the other Party and that their employees and subcontractors are not eligible for any benefits from the other

Party, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

26. Non-Appropriations.

26.1 Customer intends to continue this Agreement for its entire term and to satisfy its obligations hereunder. For each succeeding fiscal period: a) Customer agrees to include in its budget request appropriations sufficient to cover its obligations under this Agreement; b) Customer agrees to use all reasonable and lawful means to secure these appropriations; c) Customer agrees it shall not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or Services from a third party. Customer reasonably believes that sufficient funds to discharge its obligations can and shall lawfully be appropriated and made available for this purpose.

26.2 The City intends to continue this Agreement for its entire term and to satisfy its obligations hereunder. For each succeeding fiscal period: a) The City agrees to include in its budget request appropriations sufficient to cover its obligations under this Agreement; b) The City agrees to use all reasonable and lawful means to secure these appropriations; c) The City agrees it shall not use non-appropriations as a means of terminating this Agreement. The City reasonably believes that sufficient funds to discharge its obligations can and shall lawfully be appropriated and made available for this purpose.

26.3 In the event that insufficient funds are appropriated to continue payments under this Agreement and either Party has no other funding source lawfully available to it for such purpose, that Party may terminate this Agreement by giving the other Party not less than thirty (30) days prior written notice without penalty. Upon termination and to the extent of lawfully available funds, the terminating Party shall be obligated to remit all amounts due and all costs reasonably incurred by the other Party through the date of Termination.

27. IRNE Customer Advisory Group.

27.1 Upon execution of this Agreement, Customer may appoint a representative to the IRNE Customer Advisory Group (CAG), who shall represent Customer in all matters referred to the IRNE CAG. Customer shall be entitled to a representative on the IRNE CAG so long as this Agreement is in effect. The IRNE CAG's roles and responsibilities are defined below. The City's Manager of Communications Operations and Engineering shall chair the IRNE CAG.

27.2 Role of the User Board. The role of the IRNE CAG is to review rates for IRNE Services to government and educational institutions. The IRNE CAG may also provide recommendations and advice to the IRNE management and the City Council on Services, expansion, market strategy, grant opportunities, partnerships and other issues relevant to the health of the IRNE and the mutual benefit of User Board Members and the City. The IRNE CAG may also review Service Level Agreements to be offered to IRNE users.

27.3 Limitations. The IRNE CAG may not make recommendations that would jeopardize the ability of the City of Portland to meet its debt or general fund obligations by setting rates for Services lower than the cost to provide those Services. The City may provide the IRNE CAG with a Cost of Service study annually indicating the expenses (capital and ongoing) associated with the IRNE Services provided to members.

27.4 Responsibilities. The IRNE CAG shall meet as required to review the cost of Service study and recommend rates and Services. It may meet more often as necessary to address other issues as required.

28. **Entire Agreement.** This Agreement consists of this Agreement and any Amendments, Exhibits, Attachments, Quotations, Requests and Orders added from time to time pursuant to Sections 4 and 5, above. There are no other contract documents unless specifically referenced or incorporated in this Agreement, or added or deleted by written Amendment to this Agreement. This Agreement contains the entire agreement between the Parties and supersedes all prior written or oral discussions or agreements.

29. **Electronic Execution.** The Parties agree that they may execute this Contract and any Amendments to this Contract by electronic means, including the use of electronic signatures and scanned documents.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

CITY OF PORTLAND (CITY):

Approved as to form: **APPROVED AS TO FORM**
Signed: James H. Van Dyke
Office of City Attorney
CITY ATTORNEY
Date: 3/16/2012

Signed: [Signature]
Chief Technology Officer

Date: 3/16/12

CITY OF TROUTDALE (CUSTOMER)

Approved as to form:
Signed: [Signature]
David Ross, Troutdale City Attorney
Date: 3/15/12

Signed: [Signature]
(Authorized Signature)
Craig Ward, City Manager, City of Troutdale

Date: 3/15/12