

RESOLUTION NO. 2151

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT (IGA) WITH THE CITY OF GRESHAM FOR THE USE OF THE NETMOTION SERVER.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City of Gresham provides the Troutdale Police Department access to their NetMotion server allowing our Mobile Data Terminals to connect with BOEC.
2. City of Gresham partnered with East County jurisdictions to provide a broadband solution for the new VCAD system.
3. This collaboration provides for the police department to have a reliable connection to BOEC at a cost savings to the City.

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


Section 1. The City Manager is authorized to sign an Intergovernmental Agreement substantially in accordance with the agreement attached as an Exhibit to the staff report, and to sign any necessary extensions or amendments thereto.

Section 2. This Resolution shall take effect upon adoption.

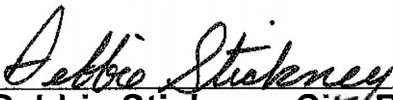
YEAS: 7

NAYS: 0

ABSTAINED: 0


Mayor Jim Kight


Date


Debbie Stickney, City Recorder
Adopted: May 22, 2012

**INTERGOVERNMENTAL AGREEMENT
CONTRACT NO. 5546**

This Intergovernmental Agreement ("Agreement") is entered into by and between the City of Gresham ("GRESHAM") and the City of Troutdale ("TROUTDALE"), both municipal corporations of the State of Oregon (hereinafter referred to jointly as "the Parties").

WHEREAS, the purpose of this Agreement is to establish a framework by which GRESHAM will provide specific computer related services to TROUTDALE.

WHEREAS, the Parties desired to have access to a NetMotion server to allow for the transfer of information between GRESHAM's computer system located within GRESHAM's facilities to TROUTDALE's law enforcement vehicles;

WHEREAS, GRESHAM agreed to purchase the NetMotion server and TROUTDALE agreed to contribute a portion of the purchase price in order to compensate GRESHAM for its time and expense installing and maintaining the system;

WHEREAS, GRESHAM is the exclusive owner of the NetMotion server and agrees to host and maintain the NetMotion server and provide for the administrative services necessary to operate it;

WHEREAS, TROUTDALE agrees to compensate GRESHAM for its administrative costs to operate the system and provide access to TROUTDALE facilities and vehicles;

WHEREAS, the Parties wish to clarify the above described relationship with respect to GRESHAM's provision of administrative services and TROUTDALE's compensation for such services to GRESHAM;

NOW, THEREFORE, THE PARTIES HEREBY AGREE:

1. Term. This Agreement shall be effective commencing July 1, 2011 and shall expire June 30, 2012. Thereafter, this Agreement may be renewed for ten (10) additional one year terms unless terminated pursuant to the procedures set forth in paragraph 13 below.

2. Roles and Responsibilities.

a. GRESHAM. GRESHAM shall perform the following administrative services as set forth below and as otherwise described throughout this agreement:

- i. Provide data connection from TROUTDALE to BOEC via a NetMotion server.
- ii. Provide Network account maintenance for TROUTDALE.
- iii. Load and maintain the Versaterm software and any other software that is related to its direct operation as defined by CJIS guidelines.

- iv. Provide twenty-four (24) hour per day, seven (7) day per week connectivity for TROUTDALE, unless interrupted as further specified in this agreement.
- v. Provide periodic maintenance as needed, but which will not exceed one (1) hour every two weeks.
- vi. Notify TROUTDALE via electronic media of any and all disruptions to service.

b. TROUTDALE shall perform the following activities:

- i. Provide and maintain a current list of all employees that will be using the Mobile Data Computers to access Versaterm.
- ii. Provide and maintain any necessary software licenses for any software installed on the MDT's, other than Versaterm.
- iii. Provide care and physical maintenance of Mobile Data Computers.

3. Consideration. TROUTDALE agrees to pay GRESHAM the fees, as stated below, for performing the services described in this Agreement. A description of the basis for the initial fees is attached in Exhibit A. The fees may be modified each renewal term as specified in this agreement.

a. Infrastructure Fee. TROUTDALE shall pay GRESHAM a one-time Infrastructure Fee in the amount of \$3,771.29. TROUTDALE shall pay GRESHAM in quarterly payments in accordance with Section 4 and GRESHAM will be responsible for purchasing said licenses.

b. License Maintenance Fee. TROUTDALE shall be responsible for the costs of its annual maintenance license fee as determined by NetMotion Wireless, Inc., or its authorized agent. GRESHAM shall pay the License Maintenance Fee and request reimbursement accordance with Section 4.

c. Administration Fee. TROUTDALE shall pay GRESHAM an Administration Fee for the administrative services described in Section 2(a). The Administrative Fee shall be equal to \$5.00 per license per month. The number of initial licenses used by TROUTDALE is shown in Exhibit A and may be modified from time to time. Payment shall be made in accordance with Section 4.

- i. The fiscal year shall run from July 1 through June 30. If services under this Agreement commenced after July 1, 2011, the Administration Fee shall be prorated accordingly.
- ii. The Administration Fee is based on an estimate of the costs to GRESHAM to provide the necessary administration services included in this agreement.
- iii. The Administration Fee shall increase by three percent (3%) for each renewal period.

4. Invoices and Payment.

a. GRESHAM shall issue quarterly invoices for payment of fees and charges due under the terms set forth in this Agreement. Each invoice shall include all amounts due and shall include sufficient data to enable TROUTDALE to specifically identify the service or product being invoiced. Invoices shall be mailed to the address listed in Section 15.

b. Invoice payments are payable to the City of GRESHAM and are due within thirty (30) days of the invoice date. Payments shall be mailed to the City of Gresham, 3rd floor, Accounting Services Division, 1333 NW Eastman Parkway, Gresham, Oregon 97030.

c. If a payment is not received within thirty (30) days of the invoice date, GRESHAM shall notify TROUTDALE that the payment is delinquent. If payment is not made within sixty (60) days of the date of the delinquency notice, the past-due invoice will be subject to the City of Gresham's collection policy and may be submitted to its collection agency for further action. Invoice disputes are to be directed to the GRESHAM representative listed in Section 15.

5. Suspending Access. GRESHAM may suspend TROUTDALE access to GRESHAM's programs, software, applications or services in accordance with the provisions of this section.

a. **Suspension in an Emergency.** In an emergency, GRESHAM may temporarily deny TROUTDALE access to GRESHAM's computer system without prior notice. For purposes of this paragraph, an emergency means any situation that causes a loss or severe degradation of GRESHAM's information processing capability. If TROUTDALE is denied access because of an emergency, GRESHAM shall notify TROUTDALE as soon as possible, and in any event, no later than by end of the day the emergency is discovered. Notice under this paragraph shall be given by calling the TROUTDALE City Manager or designee, leaving a message if the City Manager is unavailable. As soon as practical thereafter, additional notice will be given by faxing a written notice to the City Manager, and by mailing the written notice as required under paragraph 15 of this Agreement. The written notice that is faxed and mailed shall contain a description of the emergency and an estimate of when access will be restored. GRESHAM shall keep TROUTDALE informed of the progress GRESHAM is making to restore TROUTDALE's access and shall restore access as soon as possible. If GRESHAM believes the emergency was caused in whole or in part by TROUTDALE, GRESHAM shall assist TROUTDALE in locating the cause of the emergency and shall inform TROUTDALE of what changes TROUTDALE needs to make to prevent similar emergencies in the future.

b. In the event of a degradation of service such that GRESHAM'S computer system is running at less than full system capacity, TROUTDALE shall be allotted the use of 15% of system capabilities.

c. **Suspension for Routine Computer System Maintenance.** GRESHAM may temporarily suspend TROUTDALE's access to GRESHAM's programs, software, applications or services when necessary to perform routine computer system maintenance. If

access is being denied for routine computer system maintenance, GRESHAM shall notify TROUTDALE's City Manager or designee in writing, by fax or e-mail, at least one day before TROUTDALE will be denied access. GRESHAM shall perform the routine maintenance as quickly as possible and shall make every effort to minimize the amount of time TROUTDALE is denied access.

6. TROUTDALE's Hardware and Software. All hardware and software located at TROUTDALE's facilities or within TROUTDALE's vehicles shall be the responsibility of TROUTDALE unless specifically provided otherwise in an addendum to this Agreement.

7. Technology Upgrades. In the event that GRESHAM requires technology upgrades necessary to maintain operability and services as outlined in this Agreement, TROUTDALE shall be responsible for the percentage of costs for such technology upgrades that are equivalent to its percentage of total licenses registered to use the NetMotion server.

8. GRESHAM's Software. In no case shall software on the GRESHAM computer system be installed, modified, enhanced, or deleted by TROUTDALE without the express written consent of GRESHAM. If a program or software vendor recommends modifying or enhancing GRESHAM's software to remedy problems TROUTDALE is having with the computer system, TROUTDALE will notify GRESHAM of the problem and the recommended modification or enhancement and will request GRESHAM to perform the modification. GRESHAM shall not unreasonably withhold performance of said request. TROUTDALE shall be responsible for payment of any requested upgrade.

9. Repairing Problems. In the event that the computer system is not functioning according to expectations, the problems shall be addressed in the following manner. If the problem affects both TROUTDALE and GRESHAM and involves services or equipment that GRESHAM maintains pursuant to the terms of this Agreement, GRESHAM shall be responsible for repairing the problem and shall work with the hardware or software vendor to correct the problem with input and cooperation from TROUTDALE. TROUTDALE shall be solely responsible for problems TROUTDALE experiences with its own hardware, software or services that are not addressed by this Agreement or an addendum.

10. Indemnification. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, each party to this agreement shall indemnify, hold harmless and defend the other party, their officials, boards, commissions, agents and employees from and against any and all claims, damages, losses and expenses, including attorney fees, both at trial and on appeal, arising out of or resulting from the negligent or willful misconduct of the indemnifying party in performing or failing to perform under this Agreement.

Each party specifically disclaims responsibility for any special, indirect, consequential, or incidental damages including but not limited to lost revenues, profits, use of data even if advised of the possibility of such damages, whether the claim for such damages is based on contract, tort, or any other legal theory.

11. Termination. Either party may terminate this Agreement or any addendum in accordance with the terms below

a. For Cause. Either party may terminate this Agreement if either party fails to perform as required under the Agreement. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within 15 days of the notice, then the party giving the notice may terminate the Agreement at any time thereafter by giving a written notice of termination. In the event of a for cause termination, none of the fees described in Section 3 shall be refunded, however, the Administration Fee described in Section 3.c. shall no longer be due and payable after the termination date.

b. Without Cause. Either party may terminate this Agreement without cause upon ninety (90) days written notice to the other. In the event of a without cause termination, TROUTDALE shall be entitled to a refund of the pro rata portion of the Administration Fee or Infrastructure Fee paid by TROUTDALE for any remaining period of the agreement from the date of termination. For the purposes of the Infrastructure Fee, the useful life of the Net Motion Server shall be four (4) years. The License Maintenance Fee shall not be refunded.

c. Mutual. The Parties, by mutual written agreement, may terminate this Agreement at any time. In the event of a mutual termination, TROUTDALE shall be entitled to a refund of the pro rata portion of the Administration Fee or Infrastructure Fee paid by TROUTDALE for any remaining period of the agreement from the date of termination. For the purposes of the Infrastructure Fee, the useful life of the Net Motion Server shall be four (4) years. The License Maintenance Fee shall not be refunded.

12. Integration and Conflicts. This Agreement, and the addendum(s) referenced herein, constitutes the entire Agreement between the parties regarding TROUTDALE's use of GRESHAM's computer system. There are no promises, terms, conditions or obligations other than those contained in this Agreement and the addendum(s). This Agreement and the addendums supersede all prior communications, representations or agreements, either verbal or written, between the parties. If there is a conflict between the terms in this Agreement and the terms in the addendum(s), the terms in the addendum(s) control.

13. Notice. All notices required under this Agreement shall be in writing and shall become effective upon receipt. For purposes of this Agreement, the word "receipt" shall mean the earlier of any of the following: the date of delivery as shown on the return receipt or the records of the courier, or the date of actual receipt by the office of the person or entity to whom the notice was sent. Notices shall be sent to the parties at the addresses shown below:

City of Gresham
Attn: Julie Kallem / GPD
1333 N.W. Eastman Parkway
Gresham, OR 97030

City of Troutdale
Attn: Sergeant Marc Shrake
141 SE Dora
Troutdale, OR 97060

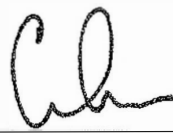
14. Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the fullest extent permitted by law.

15. Waiver. Any waiver of any term of this Agreement by either Party shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the either Party from declaring a breach of the same or any other term of the Agreement.

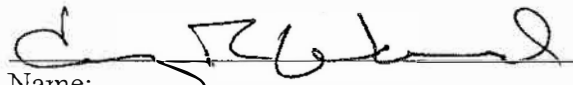
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

CITY OF GRESHAM

CITY OF TROUTDALE



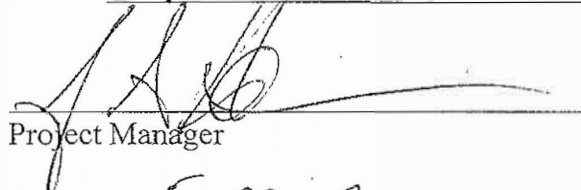
Erik V. Kvarsten, City Manager



Name:

Dated: 5-16-2012

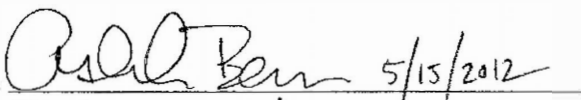
Dated: 5/23/12



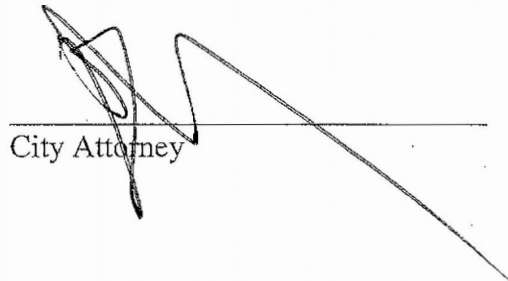
Project Manager
Dated: 5-29-12

APPROVED AS TO FORM:

APPROVED AS TO FORM:



City Attorney designee 5/15/2012



City Attorney

EXHIBIT A
IGA NET MOTION SERVER FEES
3/5/2012

One time infrastructure fee		\$25,980.00		
	% of licenses	Annual	Quarterly	
Gresham Fire	18%			
Gresham Police	55%			
Fairview	10%	\$2,514.19	\$628.55	
Troutdale	15%	\$3,771.29	\$942.82	
District 14	3%	\$838.06	\$209.52	
	100%			
Recurring Annual License Fee		\$7,300.00		
First year costs				
	% of licenses	Annual	Quarterly	
Gresham Fire	18%			
Gresham Police	55%			
Fairview	10%	\$706.45	\$176.61	
Troutdale	15%	\$1,059.68	\$264.92	
District 14	3%	\$235.48	\$58.87	
	100%			
Recurring Annual Administration Fee		\$5 per license		
	# of licenses	Annual	Quarterly	Monthly
Gresham Fire	22			
Gresham Police	68			
Fairview	12	\$720.00	\$180.00	\$60.00
Troutdale	18	\$1,080.00	\$270.00	\$90.00
District 14	4	\$240.00	\$60.00	\$20.00
	124			