

AGREEMENT
For IRNE Telecommunications Services
5-Year Agreement

This Agreement is between the City of Portland (City), and the City of Gresham (IRNE Partner).

AGREED

1. PARTIES

This Agreement may refer to the City and the IRNE Partner individually as a Party, or collectively as the Parties.

2. PROJECT MANAGERS

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

2.2 The IRNE Partner's Project Manager shall be Pam Butalla. The IRNE Partner's Project Manager may appoint additional project managers.

3. ATTACHMENTS

Attachments may be added or deleted from time to time by written amendment to this Agreement signed by both parties' project managers.

4. PURPOSE

4.1 The purpose of this Agreement is to provide the IRNE Partner access to and use of specific City telecommunications services through the City's Integrated Regional Network Enterprise (IRNE). The IRNE is a regional telecommunications network established and managed by the City for the mutual benefit of the City and other public entities in the region who subscribe to IRNE services.

4.2 Services provided to the IRNE Partner on the IRNE (IRNE Services) will be provided after receipt of a Service Order (Order) from the IRNE Partner to the IRNE Project Manager. The IRNE Partner may order any service offered by the IRNE, provided that it is available to the IRNE Partner's location, and the IRNE Partner agrees to pay all construction, installation and recurring charges for the service(s). IRNE services shall be provided under the specific terms and conditions as detailed and described in this Agreement. The City shall not be controlling in any way the content of information over the IRNE.

4.3 The IRNE Partner understands and agrees that the IRNE Services provided under this Agreement are for use by and for the IRNE Partner for the conduct of its official business. The IRNE Partner shall not resell, barter or share the IRNE Services to or

with any commercial entity.

- 4.4 Upon execution of this agreement, the IRNE Partner may appoint a representative to the IRNE User Board. The IRNE Partner shall be entitled to a representative on the User Board so long as this agreement is in effect. The IRNE User Board's role and responsibilities are defined in Attachment One (1).

5 TERM AND RENEWAL

- 5.1 This Agreement shall be effective as of the first installation date of IRNE Services (as evidenced by the City's records) and shall terminate upon completion of 60 months from that date.
- 5.2 If mutually agreeable to the Parties, this Agreement may be extended or renewed for additional periods, such periods to be determined at time of extension or renewal. 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. Any mutually agreeable extension or renewal of this Agreement shall be by written amendment, signed by authorized representatives of the Parties.
- 5.3 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 new rates, charges and other 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 the IRNE Partner to continue to purchase IRNE Services after termination of this Agreement.

6 TELECOMMUNICATIONS SERVICES ORDER PROCESS

- 6.1 The City shall provide the IRNE Services upon receipt and acceptance of an order for service (Order) by the IRNE Partner. Services provided will be in conformance with the published IRNE catalog of services.
- 6.2 Interfaces shall be described in the published catalog. The IRNE Partner shall indicate its requirements for interfaces in Orders.
- 6.3 Work to be performed by the City or the IRNE Partner to install or operate the IRNE Services shall be as described in Order(s).
- 6.4 The IRNE Partner shall submit an Order to the IRNE project manager for services describing the type of service requested, the install date requested and the interface requested. The IRNE project manager shall respond within ten (10) working days with a cost quote including recurring charges, non-recurring charges, installation charges, construction charges and any other cost to the IRNE Partner. The IRNE project manager shall also provide an installation date and service due date to the IRNE Partner.
- 6.5 If engineering and/or construction is required before a service order can be filled for the IRNE Partner, the IRNE project manager will instead notify the IRNE Partner within ten (10) working days of receipt of the service Order that the service Order can not be filled, and that an engineering or construction Order is required. In this

instance, the IRNE project manager will provide to the IRNE Partner an engineering and construction cost estimate. If the IRNE Partner wishes to proceed with the engineering and construction work, the IRNE Partner shall provide a modified Order for service which includes the engineering or construction work identified by the City as necessary to provide the service requested. Once the Order has been modified to include the engineering or construction required, and has been resubmitted to the City, the City shall notify the IRNE Partner within ten (10) working days of its ability to provide a due date for service delivery.

- 6.6 If the City is unable to provide the service to the IRNE Partner in a timely manner, or the service delivery date is unacceptable to the IRNE Partner, the IRNE Partner may withdraw the service order, or request another service from the City.
- 6.7 The City shall make every effort to meet the service delivery date to the IRNE Partner that is quoted on 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 a delay is expected by the City, it shall promptly notify the IRNE Partner and revise the Service Order delivery date.
- 6.8 The City shall make every reasonable effort to provide the service required by the IRNE Partner on the dates promised. However, the IRNE Partner shall be aware that when construction, engineering or other issues which affect service turn up, the City shall not be held responsible for any damages, penalties or liability due to service turn up delay.

7. RATES, CHARGES AND PAYMENT PROCEDURES

- 7.1 IRNE Services shall be billed to the IRNE Partner as monthly recurring charges, or as installation, construction, engineering, equipment, or other non-recurring charges. The rates that form the basis of these charges shall be established by the City. The rates for services shall be published annually by the City in the IRNE catalog of services.
- 7.2 The City will establish rates for services that are tied to the term length of this agreement. The City reserves the right to develop new rates for services previously not in the catalog at any time, and publish them in the catalog of services. Upon publication by the City, any new service and new rate will be available to the IRNE Partner. Rate increases for services ordered and delivered during the term of this agreement shall be limited to the increase in the consumer price index as forecast and published by the City's budget office during the term of the Contract with the IRNE Partner. At the termination of the Contract, or at any time the Contract is amended or extended beyond the original Contract term, the rates for services ordered and delivered from that time forward shall be updated to reflect the current published contract 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 services in effect at the time of the renewal or extension.
- 7.3 The IRNE Partner shall pay all charges within 30 calendar days of issuance of an invoice from the City. Interest shall be charged to late accounts as provided by Portland City Code. Failure to pay charges when due may also result in termination

of IRNE Services as provided by section 14 of this Agreement.

- 7.4 In lieu of monthly payments for recurring charges, The IRNE Partner may prepay the monthly recurring charges annually on a fiscal year basis. The annual payment shall consist of the monthly recurring payment times twelve. 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 the Agreement.
- 7.5 In the event the IRNE Partner disputes any of the charges, the IRNE Partner shall pay all undisputed charges within the 30 days. The IRNE Partner shall notify the City of disputed charges immediately when discovered but no later than 30 days following issuance of the invoice by the City. 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 any other remedies. Charges not disputed within 30 days from issuance of an invoice from the City shall be considered valid and due. The date of issuance shall be the date on the invoice.
- 7.6 If the IRNE Partner disputes charges and does not pay such charges by the payment due date, such charges will be subject to late payment charges. If the disputed charges have been withheld and the dispute is resolved in favor of the billing Party, the IRNE Partner shall pay the disputed amount and applicable late payment charges no later than the second billing period following the resolution. If the disputed charges have been withheld and the dispute is resolved in favor of the IRNE Partner, the billing Party shall credit the bill of the IRNE Partner for the amount of the disputed charges no later than the second Bill Date after the resolution of the dispute. If the IRNE Partner pays the disputed charges and the dispute is resolved in favor of the billing Party, no further action is required.
- 7.7 If the IRNE Partner pays the disputed charges and the dispute is resolved in favor of the IRNE Partner, the billing Party shall credit the IRNE Partner's bill for the disputed amount and any associated interest no later than the second bill payment due date after the resolution of the dispute. The interest calculated on the disputed amounts will be the same rate as late payment charges. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.
- 7.8 The invoice received by the IRNE Partner from the City shall contain detail necessary to identify the circuit or service provided, itemized charges on the circuit or service and the IRNE Partner identifier, geographic address and billing interval. Every service or circuit provided by the City to the IRNE Partner shall have a discrete identifier on the invoice to facilitate IRNE Partner tracking of service charges.

8. INTERFACES

- 8.1 At the IRNE Partner location the City shall provide a standard network interface for the type of IRNE Services provided, and as described in the Service Order. The City will work with the IRNE Partner to meet IRNE standards for interface, or will propose alternatives to the standard if there is a legitimate need to do so to protect the integrity of the IRNE Partner's facilities or network security. The IRNE Partner 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 the IRNE Partner's premises in order to provide the IRNE Services and network interface. The IRNE Partner shall be responsible for providing and/or paying for such equipment and space for the equipment, including environmental controls, power, and other required support.

- 8.2 In the event special construction or equipment is required to provide the IRNE Interfaces to the IRNE Partner location, the IRNE Partner shall be responsible for payment for those items and their installation. These charges shall be quoted to the IRNE Partner at the time of service order processing as provided in section 6, and paid as non-recurring charges by the IRNE Partner as provided by section 7 of this Agreement.

9. MANAGEMENT OF THE IRNE SERVICE

- 9.1 An IRNE Network Manager appointed by the City and a IRNE Partner Network Manager appointed by the IRNE Partner shall manage their discrete areas associated with use of the IRNE Services. The IRNE Network Manager shall be responsible for activities relating to providing the IRNE Partner with access to the IRNE Services and with maintaining the integrity of the IRNE Services. The IRNE Partner Network Manager shall be responsible for any equipment provided by the IRNE Partner 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 contract within five (5) days of execution of this Agreement.
- 9.2 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.
- 9.3 If either party changes Network Managers, the party shall provide the other with prior written notification. Prior notification shall occur at least thirty (30) days in advance of the change, if possible. If 30 days advance notice is not possible or practical, then prior notice shall occur no later than one (1) week before the change is to take place.
- 9.4 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 section 9.1 of this Agreement.

10. OWNERSHIP OF THE IRNE

The City shall retain asset ownership and physical control of the IRNE, to include equipment or facilities installed on the IRNE Partner's premises for the purpose of providing IRNE Services to the IRNE Partner.

11. MAINTENANCE AND OPERATIONS

- 11.1 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 the IRNE Partner location, the IRNE Project Manager shall provide a schematic depicting the IRNE demarcation in the IRNE Partner's facilities. Costs associated with IRNE network maintenance and interfaces identified on the schematic as IRNE managed equipment and facilities shall be paid by the IRNE. The IRNE Partner 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 site schematic as the responsibility of the IRNE network will be maintained and operated by the IRNE Partner.

- 11.2 In the event of any transmission problem, the City and the IRNE Partner 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.
- 11.3 The IRNE Partner shall attempt to isolate service problems and determine whether the problems exist at the IRNE Partner's end or at the IRNE end of the network interface before reporting the problems to the IRNE NOC.
- 11.4 If the IRNE Partner determines that the problem likely resides at the IRNE end, the IRNE Partner shall report the problem to the IRNE NOC. The method of reporting shall be determined by the City and provided to the IRNE Partner'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.
- 11.5 If the City determines that the problem likely resides with the IRNE Partner's equipment or facilities, the IRNE NOC shall report the trouble to the IRNE Partner's Network Manager or other designated person. Method of reporting shall be determined by the IRNE Partner and provided to the IRNE Network Manager in writing.
- 11.6 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.

12. SITE ACCESS

The City shall have reasonable access to its equipment and facilities at the IRNE Partner's location for the purposes of testing, trouble resolution, installations, upgrades, and other necessary work. The access at IRNE Partner's location shall be in accordance with the IRNE Partner's building management policies and procedures; however the IRNE Partner shall make every reasonable effort to accommodate City access requirements. The City project manager and the IRNE Partner Project Manager shall define network access requirements and procedures in writing in order to facilitate the site access requirements of the City.

13. AMENDMENTS

The terms of this Agreement shall not be waived, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement signed by authorized representatives of the Parties. Any amendment of this Agreement may be authorized on behalf of the City by the Director of ComNet. Any amendment to this

Agreement may be authorized on behalf of the IRNE Partner by the IRNE Partner's Project Manager.

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. In the event of early termination by the IRNE Partner pursuant to this section, the IRNE Partner shall be liable for termination charges as defined in the IRNE published rates and charges.
- 14.2 Either Party may terminate this Agreement in the event that either 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 period, this Agreement shall be immediately terminated and no additional advance notice is required.
- 14.3 Except as provided by section 14.4 either Party may terminate this Agreement in the event of a breach of the Agreement by the other. 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 fifteen (15) days of the notice, then the Party giving the notice may terminate this Agreement at any time thereafter by giving a written notice of termination.
- 14.4 In the event the City fails to provide IRNE Services due to the IRNE Partner as described in the Attachments for any period of 72 hours in a billing period or calendar month, the IRNE Partner may terminate this Agreement upon written notice to the City.
- 14.5 IRNE Partner

15. INDEMNIFICATION

Subject to the conditions and limitations of the Oregon Constitution, Article XI, section 9, and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the City shall indemnify, defend and hold harmless the IRNE Partner and the IRNE Partner's officers, agents and employees against all claims, demands, actions and suits (including all attorney's fees and costs) brought against any of them arising from the City's work under this Agreement. Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, the IRNE Partner shall indemnify, defend and hold harmless The City and the City's officers, agents and employees against all claims, demands, actions and suits (including all attorney's fees and costs) brought against any of them arising from the Contractor's work under this Agreement.

16. INSURANCE NOTE

The IRNE Partner and the City shall each be responsible for providing workers compensation insurance as required by law. The parties shall not be required to provide or show proof of insurance coverage.

17. ACCESS TO RECORDS

The Parties shall maintain all records pertaining to this Agreement according to professionally accepted standards, for a period of three (3) years following termination of this Agreement. Upon reasonable written notice, each Party shall have access to the books, documents and other 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, the Contractor and the City shall comply with all applicable federal, state and local laws and regulations.

19. OREGON LAW AND FORUM

This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the City and the IRNE Partner 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 the IRNE Partner: Pam Butalla, Information Technology Manager
Finance and Management Services
1333 NW Eastman Pkwy
Gresham, OR 97030-3813

If to the City: Nancy Jesuale, Director
Bureau of Communications and Networking
City of Portland
3732 S.E. 99th Avenue
Portland, OR 97266-2505

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 the Agreement did not contain the particular provision held to be illegal or invalid.

22. COMPLETE AGREEMENT

This Agreement consists of this Agreement and its Attachments. 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 supercedes all prior written or oral discussions or agreements.

23. 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 120 days is required and the Parties shall not be obligated to approve of or otherwise agree with any proposed assignment or subcontracting arrangement. 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.

24. FORCE MAJEURE

24.1 The City or the IRNE Partner shall breach this Agreement if it fails to perform any substantial obligation under this Agreement, except as provided in subsection 24.2.

24.2 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.

25. 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 be of the same nature as that waived.

26. 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 they are not employees of the other Party and 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.

27. NON-DISCRIMINATION

Both parties shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.

Attachment One

CITY OF

PORTLAND, OREGON

COMMUNICATIONS AND NETWORKING

Nancy Jesuale, Director



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Tim Grewe, Chief Adminis
3732
Portland, O

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IRNE User Board Roles and Responsibilities

Role:

The role of the User Board is to recommend rates for IRNE services to government and educational institutions. The User Board may also provide recommendations and advice to the 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 User Board may also approve Service Level Agreements to be offered to IRNE users.

Limitations:

The User Board 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 will provide the User Board with a Cost of Service study annually indicating the expenses (capital and ongoing) associated with the IRNE services provided to members.

Responsibilities:

The User Board shall meet annually to review the cost of service study and recommend rates and services. The User Board may meet more often as necessary to establish Service Level Agreements or to address other issues as required.

CITY OF PORTLAND (CITY):

its

CITY OF PORTLAND, by and through

Elected Officials:

APPROVED AS TO FORM:

By: _____
Deputy City Attorney

By: _____
Mayor Vera Katz

Date: _____

Date: _____

By: _____
City Auditor

Date: _____

CITY OF GRESHAM(CITY):

CITY OF GRESHAM, by and through its
Elected Officials:

APPROVED AS TO FORM:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

By:

Title: _____

Date: _____

