

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

between the City of Portland and Multnomah County
for chargeback of Radio Shop work for 800MHz rebanding

This Agreement is between the City of Portland (CITY), and Multnomah County (COUNTY). This Agreement may refer to the CITY and COUNTY individually as a Party, or collectively as the Parties.

0.0 Recitals.

0.1 On August 6, 2004, the FCC issued Report and Order FCC 04-168 that modified its rules governing the 800 MHz band to minimize harmful interference to public safety communications systems. On December 22, 2004, the FCC issued a Supplemental Order and Order on Reconsideration FCC 04-294. The August 6 and December 22, 2004 orders, and any supplemental orders the FCC issues, are collectively referred to as the "Order."

0.2 Pursuant to the Order, certain licensees of 800 MHz channels used in public safety or other systems must relinquish their existing channels and relocate their systems to other licensed channels ("Replacement Channels"); and Nextel must relinquish some of its existing channels and must provide and pay relocation funds ("Relocation Funds") to enable affected licensees to relocate their systems onto Replacement Channels and reconfigure their systems so that they are "Comparable Facilities".

0.3 The FCC has appointed a Transition Administrator ("TA") to assure that the rebanding initiative proceeds on schedule and in a planned and coordinated manner so that disruption to a licensee's system is minimized. In the TA's published "Reconfiguration Handbook," the two major phases to accomplish the reconfiguration are described as the "Reconfiguration Planning Phase" and the "Reconfiguration Implementation Phase."

0.4 The CITY has completed its Reconfiguration Planning Phase and is currently in the Reconfiguration Implementation Phase of rebanding its 800MHz Public Safety radio system.

0.5 As part of that program The City selected Sprint / NEXTEL, hereinafter referred to as "NEXTEL". NEXTEL is providing funds to pay for radio shop labor and materials involved in replacing and programming radios.

0.6 As the 800 MHz license-holder the funds are provided to the City of Portland.

0.7 The COUNTY in addition to maintaining its own Public Safety radios, maintains radio equipment for other governmental entities.

0.8 This Agreement provides pass-through funding for the COUNTY to receive funds for the rebanding program work the COUNTY performs on its Public Safety radios and those of other jurisdictions it supports.

0.9 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.

Now therefore, the Parties Agree:

1.0 Term and Renewal.

1.1 This Agreement shall be effective from January 1, 2009 to December 31, 2010 and shall terminate at either completion of sixty (60) months from the effective date, or completion of all rebanding work by COUNTY for itself and the jurisdictions it supports, whichever is earlier, unless otherwise terminated as provided herein.

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

1.2 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 or execution of a new Agreement, signed by authorized representatives of the Parties.

2.0 Project Managers.

2.1 The CITY's Project Manager for this Agreement shall be the CITY's Infrastructure and Engineering Manager. The CITY Project Manager may appoint additional project managers.

2.2 COUNTY's Project Manager shall be the FREDS Director. The COUNTY's Project Manager may appoint additional project managers.

3.0 **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.

4.0 Rates, Charges & Payment Procedures.

4.1 The amounts requested by COUNTY for work performed on Public Service radios under the rebanding program shall not exceed the amount per unit in the Sprint/NEXTEL agreement, as shown in Exhibit A.

4.2 The maximum amount to be paid under this Agreement is approximately \$24,000.

4.3 No more frequently than monthly, COUNTY shall submit requests to the CITY for payment for work performed related to rebanding its Public Service radios and those of other jurisdictions it supports.

4.4 CITY shall reimburse all charges within forty five (45) calendar days of the date of the COUNTY's invoice.

4.5 Each invoice received by CITY from the COUNTY shall contain the details necessary to identify the product or service provided, itemized charges on the product or service and billing interval. Detail shall be separated and amounts subtotaled by work completed by COUNTY for Multnomah County Public Safety radios and each other jurisdiction for which the work was performed by COUNTY. Omission of any of the detail listed below may delay payment until such detail is made available. Each invoice shall indicate:

4.5.1 Product or service name, i.e., 800 MHz rebanding

4.5.2 The period in which the work was performed

4.5.3 The CITY's Agreement number

4.5.4 If the radio is replaced the serial number of the old radio matched to the new replacement radio

4.5.5 If the radio is replaced the model number of the old radio matched to the new replacement radio

4.5.6 If the radio is replaced COUNTY must return the old radio to CITY within thirty (30) days of receiving the new radio(s)

4.5.7 The number of radios successfully rebanded

4.5.8 The amount for the work on that type of equipment

4.5.9 Subtotals by COUNTY and/or jurisdiction for who the work was performed by COUNTY

4.5.10 The total amount requested

4.5.11 The remittance address

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

4.6 Within thirty (30) calendar days after completion of all rebanding services, the end of the term of this Agreement or after the earlier termination of Services, COUNTY shall submit a final request to CITY and shall mark it "FINAL."

4.7 COUNTY shall maintain documentation supporting each amount requested until the completion of this Agreement. COUNTY shall promptly provide copies of any part or all of the documentation when requested by the CITY Project Manager.

4.8 CITY shall pay COUNTY requests from funds received from NEXTEL in accordance with payment schedule in Exhibit A. Payment is conditioned on receipt, and availability, of funds for rebanding from NEXTEL.

5.0 Early Termination.

5.1 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.

5.2 Either Party may terminate this Agreement in the event that the other Party fails to comply with all applicable federal, state 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 advance notice shall be required.

5.3 Except as otherwise provided by this section 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, or offered a plan to cure 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.

6.0 Indemnification.

6.1 Subject to the conditions and limitations of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and specifically within the limits set forth in ORS 30.270; the City shall indemnify, defend and hold harmless the County, its 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 this Agreement. Subject to the conditions and limitations of the Oregon Constitution; Article XI, Section 10, and the Oregon Tort Claims Act, ORS 30.260 through 30.300, and specifically within the limits set forth in ORS 30.270; the County 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 this Agreement. Neither party is required to indemnify third parties.

6.2 Notwithstanding the foregoing defense obligations under paragraph 6.1 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

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

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.

7.0 Insurance.

7.1 COUNTY 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 Parties and upon execution of this contract 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 COUNTY or CITY, their respective employees, management, and officials as additional insured.

7.2 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 COUNTY'S, CITY AUDITORS OFFICE. If the insurance is canceled or terminated prior to the completion of this agreement, the Parties 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 immediate termination of this Agreement by either Party.

8.0 **Access To Records.** The Parties shall maintain all records pertaining to this Agreement according to Oregon State public record retention 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.

9.0 **Compliance with Laws.** In connection with each Party's activities under this Agreement, COUNTY and the CITY shall comply with all applicable federal, state and local laws and regulations.

10.0 **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.

11.0 **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 COUNTY:

Richard F. Swift
Director - Fleet, Records, Electronics, Distribution, Stores Division
Department of County Management
Multnomah County
1620 SE 190th Avenue
Portland, OR 97233
(503) 988-5353
Richard.F.Swift@co.multnomah.or.us

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

If to the CITY: Mark Gray, Manager
Infrastructure and Engineering Manager
City of Portland
3732 S.E. 99th Avenue
Portland, OR 97266-2505
(503) 823-4317
mgray@ci.portland.or.us

Copy to: Marianne Metzger, Technology Contracts Management
Bureau of Purchases
City of Portland
1120 SW Fifth Avenue, Room 750
Portland, OR 97204
(503) 823-6925
mmetzger@ci.portland.or.us

12.0 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.

13.0 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.

14.0 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.

15.0 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 contractors and/or subcontractors agree that their employees and contractors/subcontractors are not employees of the other Party and that their employees and contractors/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.

16.0 Entire Agreement. This Agreement consists of this Agreement and any Amendments and Orders added from time to time pursuant to Section 3, 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 supercedes all prior written or oral discussions or agreements.

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

SIGNATURE PAGE

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

City of Portland (CITY):

Multnomah County (COUNTY)

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
C. Kalei L. Taylor, Deputy City Attorney

By: /s/ Matthew O. Ryan
Matthew O. Ryan, Assistant County Attorney

Date: _____

Date: November 4, 2008

CITY OF PORTLAND, by and through its Elected Officials:

By: _____
Mayor Tom Potter

By: TED WHEELER
Multnomah County Chair

Date: _____

Signature: Ted Wheeler TC

By: _____
City Auditor

Date: 11/19/08

Date: _____

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT

Exhibit A – NTE Unit Price from Sprint/NEXTEL

Work	NTE Unit Price	Unit
Remove and reinstall standard dash mount radios	\$120.00	Each
Remove and reinstall Police vehicle dash mount radios	\$210.00	Each
Remove and reinstall Fire truck dash mount radios	\$350.00	Each
Remove and reinstall Transit train dash mount radios	\$465.00	Each