

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made by and between the PORT OF PORTLAND, ("PORT") and the CITY OF PORTLAND ("CITY").

**I. RECITALS**

- A. Computer Aided Dispatch (CAD) systems are used to dispatch public safety responders to emergency situations and track and maintain the status of resources.
- B. In 2005, the City operated and maintained its CAD system through a contract with Northrup Grumman. The City and the Port entered into an Intergovernmental Agreement authorized by Portland City Ordinance 178773 whereby the City's Bureau of Emergency Communications (BOEC) provided the Port with access to its CAD system.
- C. Beginning April 16, 2011, the City's relationship with Northrup Grumman ended and the City began operating and maintaining its CAD system through a contract with Versaterm.
- D. The City has the right under its software licensing agreement with Versaterm to operate a remote dispatch center which could be used by the Port for its dispatching needs.
- E. As with its previous contract with Northrup Grumman, the City utilizes its Bureau of Technology Services (BTS) to provide technology services related to the Versaterm software.
- F. The Port and the City wish to express the terms pursuant to which the Port will use the remote dispatch system. The Port will pay an annual fee ("system charge") established by this agreement for access and use of the City's Versaterm CAD system. In addition, the Port will reimburse the City for the actual cost of CAD service charges that will include without limitation the City's actual costs for programming and system modification and maintenance work requested by the Port.
- G. Because the City's costs associated with the Versaterm contract and BTS programming are projected to increase five percent (5%) annually, the parties agree that any annual increases will be reflected in the annual system charge not to exceed 5% of the previous annual established rate, over the term of this IGA.

**ARTICLE I**

**PORT OBLIGATIONS**

- 1.1 Port computer equipment will meet all of the specifications of BOEC and will have the capacity to operate the current BOEC CAD system.
- 1.2 The Port will retain ownership of all computer and communications equipment it purchases in support of the BOEC CAD system.

- 1.3 The Port acknowledges that it is not authorized to perform BOEC CAD system maintenance except as described in Section 2.5.
- 1.4 The Port will designate a Port CAD coordinator to manage and maintain portions of the CAD system for which the Port is responsible as described in Section 2.5 and to communicate as necessary with the designated City BOEC CAD coordinator.
- 1.5 The Port will provide the City BOEC CAD coordinator of advance notice for Port projects that may impact BOEC CAD functionality. The Port notice will contain a description of the proposed work any times during which the Port CAD is projected to be offline.
- 1.6 In consultation with BOEC, the Port will remove all BOEC CAD software from Port computers within thirty (30) calendar days following the termination of this Agreement.

## **ARTICLE II**

### **BOEC OBLIGATIONS**

- 2.1 BOEC agrees to support the Port's remote dispatch center as long as the BOEC User Board does not find that dispatch center operation adversely affects other BOEC users or that operation of Port remote dispatch center causes the City to incur costs that BOEC cannot recover from the Port pursuant to the terms of this Agreement.
- 2.2 BOEC agrees that it has satisfied all software licensing requirements needed to cover all use and connectivity afforded the Port by this Agreement.
- 2.3 BOEC has the responsibility to maintain the CAD system, and the authority to modify it, if necessary, in order to upgrade the system or keep it functioning. BOEC will attempt in good faith to provide the Port with advance notice of any significant changes that have the potential to affect the Port remote dispatch system. Modifications to the BOEC system shall be deemed necessary and regardless of resulting impacts, will not constitute a breach of the IGA by BOEC.
- 2.4 BOEC agrees to provide the Port advance notice in writing of scheduled system changes that have the potential to materially interrupt or impede Port operations. Notifications will be made as soon as practical under the circumstances and ideally within thirty (30) days and may be made via e-mail.
- 2.5 BOEC agrees to provide the Port CAD Coordinator the necessary information, training, and system permissions and all software updates necessary to perform basic Port-related system administration tasks. Such administration tasks include but are not limited to front-line troubleshooting in the Development system and, within the Port's designated areas in the Production system, updating officer, vehicle, and radio tables. Routine business name changes (landmarks in CAD) will be requested through the designated City BOEC CAD coordinator and work effort of no more than

15 minutes per week will be provided at no additional cost. All other street file maintenance will be billable as defined in section 3.4

- 2.6 BOEC will provide electronic versions of system and training documents to the Port. BOEC will provide the Port with any amendments to these documents within a reasonable period of time.
- 2.7 If BOEC intends to migrate to a different CAD system, BOEC will inform the Port of its intention at least one hundred and eighty (180) calendar days in advance so the Port can determine its interest in participating in the new system.

### ARTICLE III

#### GENERAL PROVISIONS

- 3.1 Relationship of the Parties Each of the parties hereto shall be deemed an independent entity for purposes of this Agreement. No representative, agent, employee or contractor of one party shall be deemed to be an employee, agent or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship or principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.
- 3.2 Integration This document constitutes the entire Agreement between the parties and supersedes all prior or contemporaneous written or oral understandings, representations or communications of every kind. No course of dealing between the parties and no usage of trade will be relevant to supplement any term used in this Agreement.
- 3.3 Term and Termination of Agreement This Agreement is effective as of the date the last party executes this Agreement, and shall remain in effect until either party, without cause, notifies the other party in writing with not less than one hundred and eighty (180) days notice of the desire to terminate. Notwithstanding the foregoing, and in addition to any other remedies available for breach of contract, both at law and in equity, either party may terminate this Agreement upon the giving of thirty (30) days written notice to the other party, in the event of a breach of any term of this Agreement by the other party that is not resolved by the processes outlined in Section 3.1, within the time frame set forth in that Section.
- 3.4 System Charges

#### **Pro-Rated System Charges From April 16, 2011 through June 30, 2011**

For this time period, the Port agrees to pay BOEC a pro-rated annual system charge in the amount of \$1,875.

#### **Pro-Rated System Charges From July 1, 2011 through June 30, 2012**

For this time period, the Port agrees to pay BOEC a pro-rated annual system charge in the amount of \$170,000.

These amounts are payable to BOEC 30 days after this agreement is fully executed. Invoices will be emailed or faxed to:

Port of Portland Accounts Payable  
PortInvoices@portofportland.com  
 503-548-5748 (fax)

Payments will be made payable to City of Portland, Bureau of Emergency Communications and mailed to:

City of Portland  
 Attn: Accounting Division  
 1120 SW Fifth Ave, Rm. 1250  
 Portland, OR 97204

#### **Annual System Charges Starting July 1, 2012**

Annual system charges for this and subsequent years will be based on a fiscal year, which starts on July 1 and ends on June 30. Service charges will be billed by June 15 of each year for the coming fiscal year, with two equal payments due by July 1, and January 1.

#### **Annual System Charge Increases**

BOEC will increase the Port's annual system charges to cover actual cost increases, not to exceed five percent (5%) every year.

#### **Programming and System Modification and Maintenance Charges**

The Port's annual system charges cover the costs of operating the CAD system in the configuration in which it exists as of the date of the signing of this agreement. As noted in the recitals, the Versaterm software may be tailored to the Port's unique dispatching needs, but the City will need to recoup the associated costs.

Programming and system modification and maintenance work requested by the Port will be billed at an hourly rate (currently \$120) determined by BOEC. These costs will be billed in increments of 15 minutes. Examples of programming costs include but are not limited to change requests that alter the software or coding of the Versadex product. Examples of system modification charges include but are not limited to efforts undertaken by the BOEC/BTS CAD Sustainment Team to modify call-taking or dispatch parameters and geographical data or network/system accessibility due to Port-requested or necessitated modifications.

- 3.5 Records BOEC and the Port shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three years after the Port

makes final payment on this Agreement and all other pending matters are closed. BOEC and the Port shall allow the other's Representative, or any authorized representatives of the other, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

- 3.6 Waiver and Amendment No waiver of any portion of this Agreement and no amendment, modification or alteration of this Agreement shall be effective unless in writing and signed by the authorized representative of both parties. Acceptance or acquiescence in a course of performance rendered under this Agreement will not be relevant to determine the meaning of this Agreement and no waiver by a party of any right under this Agreement will prejudice the waiving party's exercise of the right in the future.
- 3.7 Indemnification Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.
- 3.8 No Third-Party Beneficiary Except as set forth herein, this Agreement is between the parties and creates no third-party beneficiaries. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise to any third parties unless such third party is expressly described as an intended beneficiary under this Agreement.
- 3.9 Remedies The remedies provided under this Agreement shall not be exclusive. The parties also shall be entitled to any other equitable and legal remedies that are available under contract.
- 3.10 Laws, and Regulations The Parties agree to abide by all applicable laws and regulations in carrying out this Agreement.
- 3.11 Oregon Law, Dispute Resolution and Forum
- 3.11.1 This Agreement shall be construed according to the laws of the State of Oregon.
- 3.11.2 The Port and BOEC shall negotiate in good faith to resolve any dispute arising out of this Agreement. If the parties are unable to resolve any dispute within thirty (30) days, the parties agree to submit any dispute to the BOEC Commissioner-in-Charge. If an acceptable resolution is not reached through these means, the parties are free to pursue any legal remedies that may be available.

3.11.3 Any litigation between the Port and BOEC arising under this Agreement or out of work performed pursuant to 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 located in Portland, Oregon.

- 3.12 Inspecting/Maintaining/Producing CAD Records Each of the parties shall have the right to inspect, at any reasonable time, CAD records in the possession, custody or control of the other party as it deems necessary for review of the other party's obligations and its rights under this Agreement. The cost of such inspection shall be borne by the inspecting party. The CAD system will contain the data of both the Port and BOEC. BOEC will maintain the data sets. However, each party shall be responsible for maintaining and disseminating its records in accordance with the law. The Port agrees to maintain its system records for the time specified by BOEC's retention schedule for these records (three years) and not to produce these records without a Court order to the extent they are protected from disclosure by Oregon law.
- 3.13 Confidentiality To the extent allowed by law, all information received, originated, and/or processed by BOEC and the Port is confidential. BOEC is the custodian of all BOEC records created and/or maintained by these parties in accordance with ORS 192.410 to 192.505. The Port is the custodian of all Port records created and/or maintained by these parties in accordance with ORS 192.410 to 192.505. This information includes:
- a) User Agency communications (voice, written, and/or fax);
  - b) Computer Aided Dispatch (CAD) information;
  - c) Mobile Data Terminal (MDT) information;
  - d) Law Enforcement Data System (LEDS) information;
  - e) ANI/ALI information;
  - f) Voice tapes;
  - g) Reports;
  - h) Training materials;
  - i) System security information;
  - j) Data, if disclosed, that would impair system security

The confidentiality and privacy of BOEC and Port records and tapes shall be maintained and protected consistent with all relevant laws, regulations and contracts.

- 3.14 No Assignment The rights and obligations of each party under this Agreement may not be assigned in whole or in part without the prior written consent of the other party.
- 3.15 Interpretation of Agreement This Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision. The paragraph headings contained in this Agreement are for ease of reference only and shall not be used in constructing or interpreting this Agreement.
- 3.16 Notice Routine correspondence and communication regarding this Agreement will be conducted via e-mail between the authorized representatives of each agency.

If to Port, official:

The Port of Portland  
P.O. Box 3529  
Portland, Oregon 97208  
Attention: General Manager, Aviation Security and Public Safety

If to Port, routine

The Port of Portland  
P.O. Box 3529  
Portland, Oregon 97208  
Attention: Manager, Communications, Emergency and Security Systems

If to BOEC, official and routine:

Director, Portland Bureau of Emergency Communications  
P.O. Box 1927  
Portland, Oregon 97207

Either party may designate a different representative for notice purposes by giving written notification to the other party as provided in this paragraph.

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IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their seals as of the day and year hereinafter written.

**CITY OF PORTLAND****PORT OF PORTLAND**

By: Lisa Turley, Director of BOEC

By: Bill Wyatt, Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**AUDITOR**

By: City Auditor

Date: \_\_\_\_\_

**APPROVED AS TO FORM FOR  
THE CITY:**

**APPROVED FOR LEGAL SUFFICIENCY  
FOR THE PORT**

By: City Attorney

By: Counsel for the Port of Portland

Date: \_\_\_\_\_

Date: \_\_\_\_\_