

NETMOTION USER

CONTRACT

REIMBURSABLE SERVICES CONTRACT

THIS CONTRACT made and entered into this 2nd day of April, ²⁰¹² 2010 is effective for two (2) years from its date of filing, by and between CLARK COUNTY, WASHINGTON, (hereinafter "Clark County"), and the *NetMotion users*, a list of public service agencies as listed on pages 3 and 4. The purpose of this contract is to include the provisions of the agreement previously entered into by the parties on _____, to revise and update it with new provisions included herein and to cancel, replace and supersede the existing contract.

WHEREAS, the *NetMotion users* lack adequate personnel or equipment to do all required work alone and seek to utilize Clark County's assistance when appropriate to increase efficiency; and

WHEREAS, Clark County has the necessary personnel, and equipment in combination and is willing to do said work in consideration of the mutual covenants and agreements herein contained and pursuant to RCW 39.34.080, as applicable;

WHEREAS, this CONTRACT has been authorized by the respective governing bodies of the *NetMotion users* and Clark County; now, therefore,

IT IS COVENANTED AND AGREED as follows:

Clark County shall provide those services requested in task orders to accompany this CONTRACT to the same standards provided by Clark County within its boundaries.

Each task order shall represent the terms and conditions of this Agreement that specify services, products, and other costs incurred by one party that are to be compensated by the other party. The minimum terms of each task order will address the specific tasks to be accomplished, the time lines within which work is to be performed, and the amount of compensation to be paid. Clark County cannot guarantee functionality beyond that which is specifically described in the task order.

The party requesting service, covenants that its requests for service are within the annual budget for that agency and that service.

All costs to the party providing service for its labor, equipment rental, assigned contractors and subsistence shall be recovered under a reimbursable work requisition number. All

cost estimates shall include appropriate administrative overhead rates, applicable sales and business and occupation taxes, applicable liability insurance charges, and direct charges.

Upon completion of each reimbursable task order, the party requesting service agrees to pay the party providing service, the amount identified by the terms of the task order, unless modified by the task order. The *NetMotion users* shall endeavor to timely pay all bills for service. However, Clark County is entitled to charge reasonable interest on bills not paid within 30 days.

All parties agree that in the performance of this CONTRACT they shall comply with all applicable local, state and federal laws.

It is understood and agreed that each party will be responsible for its own negligence and will, to the extent of its negligence, indemnify and hold harmless the other party from any and all claims, losses, or causes of action, suits and actions in equity of any kind.

It is understood and agreed that Clark County is providing this service as an accommodation and cannot accept liability for simple negligence in performing services on behalf of other municipalities. Therefore, the parties agree that Clark County will only indemnify and hold harmless this municipality for the willful and/or reckless conduct of its employees from any and all claims, losses, or causes of action, suits and actions in equity of any kind. Municipality will indemnify and hold harmless Clark County for the negligent acts of omissions of Clark County and itself and its employees arising out of the performance of this agreement for the Netmotion users except for the willful, reckless and/or intentional acts or conduct of Clark County or its employees. Clark County will indemnify and hold harmless the Netmotion users for all intentional, reckless and/or willful acts of Clark County and its employees.

Each party agrees to hold the other party harmless from any and all bodily injury claims brought by employees of that party and expressly waives its immunity under the Ch 51 RCW, the Industrial Insurance Act, as to these claims which are brought against the other party; provided, that if any of the *NetMotion users* and Clark County are both found to be negligent, each party's duty to indemnify shall be limited to the extent of its negligence. The *NetMotion user* and County waive transfer of rights of recovery (subrogation) against each other, their agents, representatives, directors, officers and employees for any claim arising out of acts, errors, mistakes, omissions in the provision of work or services under this CONTRACT.

INSURANCE: At the execution of this contract, the *NetMotion user* must provide an original ACORD Form with the Commercial General Liability Insurer, Broker of Record, Insurance Limits(s), Renewal Dates, Deductible (< or =\$25,000), and \$1,000,000 of Annually Renewing Occurrence Based Coverage. A "Claims Made Policy" is NOT acceptable. In the case where the underlying insurance policy is expended due to excessive defense and/or indemnity claims, before renewal, the *NetMotion user* warrants and guarantees the coverage limit(s), to include indemnity and defense up to the listed limit, from its own resources regardless of coverage status due to cancellation, reservation of rights, other no-coverage-enforce reason. Coverage shall not contain any endorsement(s) excluding nor limiting

Product/Completed Operations, Contractual Liability or Cross Liability.

At the execution of this contract, and assuming vehicles are used in the *NetMotion user's* business, an ACORD Form shall be provided with \$1,000,000 in Annually Renewing Occurrence based coverage for All Vehicles Owned or Leased by the *NetMotion user*. This coverage may be added or integrated to the above CGL or BOP ACORD Form(s)

At the execution of this contract, the *NetMotion user* shall provide proof of Worker's Compensation Insurance for all its employees acceptable and in compliance with Labor and Industries Workers' Compensation Division in the State of Washington the *NetMotion user* will defend Clark County against any third party subrogation claims from Labor and Industries as if the injured *NetMotion user* employee belonged to Clark County Washington.

All policies shall be endorsed to Washington State that coverage will not be suspended, voided, canceled or reduced without a 30 day or longer written notice by mail. It is the *NetMotion user* responsibility to provide evidence of continuing coverage during the overlap periods of the policy and the contract. If coverage is required to cover Clark County and the provided coverage lapses, Clark County has the right to purchase, with reimbursement from the *NetMotion user* coverage to cover its interests.

Additional Insured: This is not appropriate as the cities and other agencies are not contractors of Clark County. WCIA cannot add a non-member as an additional insured to its coverage document. The indemnification language will have to suffice.

All policies must have a Best's Rating of A-VII or better. The *NetMotion user* shall provide its own insurance protection at its own expense for any property (contents or personal property) maintained on the premises. In addition, the *NetMotion user* shall insure the real property and all fixtures and improvements for its full insurable replacement value against loss or damage by fire and other hazards included within the term "extended coverage." Clark County Washington shall be the named insured and the policy shall provide that no cancellation or termination of coverage shall be made without 30 days written notice to Clark County. The address for all certificates will be written as follows: Clark County Washington, PO BOX 5000, Vancouver, WA 98666-5000.

All of the aforementioned insurance requirements are deemed satisfied by a Netmotion User's membership and coverage with Washington Cities Insurance Authority, a municipal insurance pool.

There are no leased premises that we have been made aware of.

ATTORNEY'S FEES: In the event that either party hires an attorney to enforce the terms of this agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs to the extent provided by Washington law. The Venue for all actions is Clark County Washington.

FORCE MAJEURE: Neither party shall be deemed in default for the nonperformance or for an interruption or delay in performance of any of the terms or conditions of this Service Contract if the same shall be due to any labor dispute, strike, lockout, civil commotion or like operation, invasion, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, inability to obtain labor, services or materials or through an act of God or causes beyond the reasonable control of that party, provided such cause is not due to the willful act or neglect of that party.

WAIVER OF ANY BREACH OF TERMS: Any waiver by of any breach of any of the terms, covenants, agreements, or conditions hereof, shall not be deemed a continuing waiver upon their part.

NOTIFICATION: Notices herein to be given by the *NetMotion user* to Clark County Washington shall be deemed to be delivered if mailed by regular United States mail, addressed to RISK MANAGEMENT at Clark County, General Services Department, PO Box 5000, Vancouver, Washington 98668.

SEVERABILITY: If any part of this contract is found unenforceable or illegal, the balance of the contract stays in full force.

Clark County is, and shall at all times be, deemed to be an independent contractor in the provision of the Services set forth in this CONTRACT. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between Clark County and the *NetMotion user* or any of the employees or agents of either party. Clark County shall retain all authority and responsibility for the provision of Services, standards of performance, discipline and control of personnel, and other matters incident to the performance of services by Clark County pursuant to this CONTRACT. Clark County shall comply with all relevant Federal, State, and municipal laws, rules, and regulations. Nothing in this CONTRACT shall make any employee of the *NetMotion user* jurisdiction an employee of Clark County jurisdiction or any employee of a Clark County jurisdiction an employee of the *NetMotion user* jurisdictions for any purpose, including but not limited to, withholding of taxes, payment of benefits, workers' compensation pursuant to Title 51 RCW, or any other rights or privileges afforded said employees by virtue of their employment

It is understood and agreed between the parties that this CONTRACT shall not be assigned, transferred or any portion subcontracted hereunder by the either party without the prior written permission of the other party.

This CONTRACT is intended for the benefit of the parties and is not intended to create third party beneficiaries.

This Agreement along with each task order constitutes a separate agreement and contains all of the Agreements of the parties with respect to the subject matter covered or mentioned therein, and no prior Agreements shall be effective to the contrary.

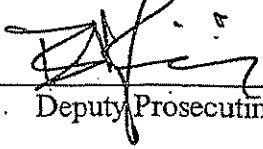
Acts taken in conformity with this CONTRACT prior to its execution and filing are hereby ratified and affirmed.

IN WITNESS WHEREOF, the parties have set their hands this _____ day of _____, 20____.

CLARK COUNTY, WASHINGTON, a subdivision of the State of Washington

Approved as to Form Only
ANTHONY GOLIK
Prosecuting Attorney

By: 
Bill Barron, County Administrator

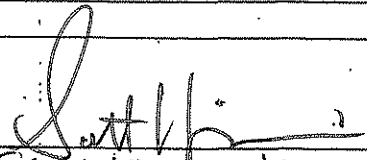
By: 
Deputy Prosecuting Attorney

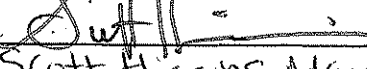
NetMotion users:

American Medical Response by: _____ date: _____
Printed Name: _____

Battle Ground Police Dept. by: _____ date: _____
Printed Name: _____

Burlington & Santa Fe Railroad by: _____ date: _____
Printed Name: _____

Camas Fire Department by:  date: 4/2/12
Printed Name: Scott Higgins, Mayor

Camas Police Department by:  date: 4/2/12
Printed Name: SCOTT HIGGINS, Mayor

Clark County Fire Marshall by: _____ date: _____
Printed Name: _____

Clark County Fire Rescue by: _____ date: _____
Printed Name: _____

CRESA by: _____ date: _____
Printed Name: _____

East County Fire Rescue by: _____ date: _____
Printed Name: _____

Fire District 3 by: _____ date: _____
Printed Name: _____

Fire District 6 by: _____ date: _____
Printed Name: _____

Fire District 10 by: _____ date: _____
Printed Name: _____

La Center Police Dept. by: _____ date: _____
Printed Name: _____

Ridgefield Police Dept. by: _____ date: _____
Printed Name: _____

Washington State Univ. @ Vancouver by: _____ date: _____
Printed Name: _____

Washougal Police Dept. by: _____ date: _____
Printed Name: _____

Washougal Fire Dept. by: _____ date: _____
Printed Name: _____

Fairgrounds Fire Facility Board by: _____ date: _____
Printed Name: _____

Task Order Number: 2011-1

1. **Task Order Title:** NetMotion Support
2. **Provider:** Clark County - Network Administration
3. **Recipient:** NetMotion User
4. **Primary POC, County:** Duane Harris, Director, Infrastructure Services
5. **Primary POC, User:** TBD
6. **Task Order Cost:** variable, based on activity level
7. **Cost Maximum:** \$ XX,XXX estimated annual maximum billing
8. **Billing Frequency:** Quarterly
9. **Billing Type:**
 - #1: Service fee: \$15.25 per device per month
 - See Attachment B**
 - #3: Hourly as per the rates in Attachment A

10. Delivery Price Notes:

- a. This Task Order deals only with services related to support of the NetMotion software as it is used in the units. Each agency will be charged a Service Fee for each NetMotion Device License on a monthly basis, (see Appendix B). This Service Fee will be billed to each agency quarterly and will be assessed based on the number of NetMotion licenses used by the agency. This Service Fee covers the costs for server replacement, Internet bandwidth usage, NetMotion software maintenance, application administration, and administrative costs. Infrastructure Services supplies only labor to support the software, not the software licenses or annual maintenance. Software licenses and annual maintenance charges will be paid by the NetMotion User organizations.

11. Task Details:

- a. The costing model for NetMotion Technical support is composed of two components:
 - i. The Service Fee that covers the fixed costs from companies that provide Clark County IS products and services are apportioned and passed along to the end-user agencies, (see Attachment B). This fee covers the cost for the replacement of the system server (prorated over 5 years), Internet bandwidth, the cost for NetMotion software maintenance, application support and administration, and administration overhead.
 - ii. Hourly Charges: Labor expenses will be charged to the user agency requesting support, according to the IS Guild contract, for services

provided as requested. These charges are described in sections 11.b through 11.f below.

- b. The NetMotion Technical Support concept of operations will be as follows:
 - i. A user agency calls CRESA to initiate a technical service call. CRESA performs an initial technical analysis to determine into which category the problem falls.
 - ii. If the problem is determined to be with the MDC (Mobile Data Computer) unit, the user agency will be directed to consult their MDC technical support provider.
 - iii. If the problem is determined to be with the aircard, the user agency will be directed to consult their aircard service provider.
 - iv. If the problem is determined to be with NetMotion (during normal business hours 8AM-5PM, M-F), CRESA will contact (call/email) the IS Services Desk. The IS Services Desk will collect from CRESA the name of the agency making the technical support request (for contract verification and billing purposes), then transfer the call to the NetMotion Administrators.
 - v. Outside of normal business hours, CRESA will call the IS Pager number. The IS Pager Contact will collect from CRESA the name of the agency making the technical support request (for contract verification and billing purposes). The IS Pager contact will then attempt to resolve the problem. If necessary, the IS Pager Contact will contact the NetMotion Administrators and transfer the problem to them for resolution.
- c. **If the cause of the problem is determined to be the NetMotion server, there will be no charge to the user agency requesting technical support. Otherwise, the user agency will be billed for all labor expenses.**
- d. Billing for NetMotion technical support will follow the terms of the IS Guild contract. During normal business hours there will be a 20-minute minimum time charge for the Services Desk, and thereafter, a 30-minute minimum time charge for the NetMotion Administrator, with billing in 20-minute increments.
- e. After normal business hours, there will be a 20-minute minimum time charge for the IS Pager Contact, with billing in 20-minute increments. And if necessary, a 30-minute minimum time charge for the Network Administrator, with billing in 20-minute increments. The billing rate for after hours support calls is \$125.00 per hour as listed in **Attachment A**.
- f. Invoices will be distributed to the appropriate user agencies each quarter.

- g. Additional NetMotion device licenses will be purchased by the County who shall be reimbursed by the requesting agency. The costs associated with the acquisition of additional licenses will be included in the agency's next quarterly Service Fee billing.

12. Task Communication/Management/Reporting:

- a. Emergency communication should occur between the designated Point of Contact (POC) and should occur ASAP.
- b. Communication between POCs is expected to occur as needed.

13. Quality/M Measurement:

- a. All requested services are performed within required time frames.
- b. A professional, courteous demeanor is maintained at all times.
- c. No surprises – Infrastructure Services staff will maintain timely notification of all relevant issues and events.
- d. NetMotion shall be available 99.9% of the time.

CLARK COUNTY
REIMBURSABLE SERVICES CONTRACT

ATTACHMENT A

HOURLY RATES: \$88.39 PER HOUR

AFTER HOURS PREMIUM: +\$36.61 PER HOUR

AFTER-HOURS PREMIUM:

Services requested between the hours of 5:00 PM and 8:00 AM on weekdays will be billed at the combined hourly rate of \$125.00 with a two (2) hour minimum.

Services requested on holidays, weekends will be billed at the combined hourly rate of \$125.00 with a four (4) hour minimum.

Rates are current as of January 2011 and subject to change annually.

CLARK COUNTY
REIMBURSABLE SERVICES CONTRACT

ATTACHMENT B

MONTHLY SERVICE FEE:

\$15.25 per device per month – Infrastructure cost recovery

Monthly service fee covers the following costs:

- 5 year server replacement cost.
- Internet bandwidth usage.
- The cost for NetMotion software maintenance.
- Application administration by the Network team and administrative costs.

Rates are current as of January 2011 and subject to change annually.

Clark County NetMotion Cost Elements

	2012	2011
NetMotion Software Premium Maintenance costs per month per Device:	\$5.80	\$5.80
NetMotion Network Support costs per month per Device:	\$4.49	\$1.93
NetMotion Server costs per month per Device:	\$0.61	\$1.28
NetMotion Server Rack Space Costs for Four Virtual Servers per Month per device:	\$0.02	\$0.09
NetMotion Network Inside Servers equipment replacement costs per month per device:	\$0.33	\$0.33
Monthly NetMotion Internet cost per Device (275):	\$3.28	\$3.51
NetMotion Internet Network Equipment at CRTC costs per month per device:	\$1.10	\$1.10
NetMotion Internet Network Equipment at CCH costs per month per device:	\$0.29	\$0.29
NetMotion Subscription costs for after hour on call support:	\$0.93	\$0.93
NetMotion costs for Active Admin licenses per month per Active Directory user Account (billed as a separate line Item):	-	-
Total Monthly NetMotion costs :	\$16.84	\$15.25
Cost based on amount of devices	275	275
Monthly support hours	8	4