

DATE: July 20, 2010
STAFF: Tom Vosberg

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

20

SUBJECT

Resolution 2010-042 Authorizing an Intergovernmental Agreement With the Poudre School District for Email Services.

EXECUTIVE SUMMARY

The City of Fort Collins is collaborating with the Poudre School District (PSD) for the provision of City employee email services. Under this agreement, Poudre School District will host the City's email system, instead of the City MIS department operating the service in-house. This arrangement will benefit both Poudre School District and the City of Fort Collins by reducing each agency's email costs.

BACKGROUND / DISCUSSION

The 2010 City budget included a funded BFO offer to upgrade the City's email system by replacing the current GroupWise system with Microsoft Exchange based email. City, County and PSD leadership have directed their respective staff to look for ways to cut costs through interagency partnerships to provide various internal services. PSD currently operates a very large and robust Exchange based email system that has adequate capacity to accommodate the City's users. A detailed feasibility study determined that all critical performance and security concerns could be address through a shared email system design. The study also showed it would be significantly more cost effective for the City to have PSD host the City's email system than for the City MIS department to operate an email system in-house. While switching to an Exchange based email system from GroupWise is generally viewed by the organization as an upgrade, this change is also a cost saving measure.

FINANCIAL / ECONOMIC IMPACTS

The combined effect of switching email systems and partnering with PSD is estimated to reduce the City's annual email costs by approximately \$55,000 in 2011 and subsequent years. Taking the one-time 2010 conversion costs into account, the 5-year total cost of ownership will be approximate \$100,000 over 5 years for the City compared to continued operation of the current GroupWise email system in-house. PSD's annual email costs will also decrease.

This agreement has no significant affect on the Fort Collins economy in terms of job creation. This arrangement will actually eliminate .5 FTE of a job in the City's MIS department, but it will create 1 new job with the private IT services firm that assists PSD in operating its email system. The net effect is an increase of .5 FTE employment in the Fort Collins community. Each agency's total email operating costs are still reduced due to other cost saving achieved through economies of scale related to hardware and licensing software costs.

This arrangement also strengthens the partnership between the City of Fort Collins and the Poudre School District.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

RESOLUTION 2010-042
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING THE EXECUTION OF AN AGREEMENT WITH
POUDRE SCHOOL DISTRICT FOR EMAIL SERVICES

WHEREAS, City staff has been directed to search for potential partnerships with other governmental entities that would result in a reduction in the entities' cost of providing internal services; and

WHEREAS, staff has identified the City's current email system, which is also due for an upgrade, as an internal service that might be a candidate for partnering with other governmental entities; and

WHEREAS, the Poudre School District (the "District") currently operates a very large and robust Microsoft Exchange based email system that has adequate capacity to accommodate the City's users; and

WHEREAS, the City and the District initiated a detailed feasibility study on sharing email services and determined that critical performance and security concerns could be easily addressed and that it would be significantly more cost effective for the City and the District to cooperatively share in the costs of an email system; and

WHEREAS, Section 29-1-203, C.R.S., authorizes governmental entities to cooperate and contract with one another in order to provide any function, service, or facility lawfully permitted to each if such a contract is properly authorized by each party thereto; and

WHEREAS, the City is authorized to enter into intergovernmental agreements to provide any function, service or facility, pursuant to Article II, Section 16 of the City Charter and City Code Section 1-22; and

WHEREAS, it is in the best interests of each of the City and the District to cooperatively share in the costs of an email system.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Intergovernmental Agreement for Hosting E-mail Services between the City of Fort Collins and the Poudre School District, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference, is hereby approved by the City Council, and the City Manager is hereby authorized to execute such Agreement, subject to such changes in form or substance as the City Manager may, in consultation with the City Attorney, consider to be necessary to effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 20th day of July, A.D. 2010.

Mayor

ATTEST:

City Clerk

**INTERGOVERNMENTAL AGREEMENT
FOR HOSTING E-MAIL SERVICES**

This Agreement is entered into as of the ____ day of July, 2010, by and between Poudre School District R-1, a school district organized and existing under the laws of the state of Colorado (the "District") and the City of Fort Collins, Colorado, a municipal corporation (the "City"), collectively referenced herein as the "parties." In consideration of the mutual covenants and promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purpose of Agreement.** As authorized under C.R.S. § 29-1-203, the purpose of this Agreement is to specify the terms and conditions pursuant to which the District will host the City's e-mail on District Microsoft Exchange servers. This arrangement is calculated to reduce the City's costs associated with changing its e-mail system from GroupWise to Microsoft Exchange, and to reduce the District's and City's costs associated with the operation and maintenance of the Microsoft Exchange e-mail system through the cooperative sharing of such costs.

2. **Term and Termination of Agreement.**

2.1 This Agreement shall commence on the date first set forth above and shall continue through and including December 31, 2010, unless earlier terminated as provided herein. This Agreement shall be renewed from year to year for one-year terms (January 1 through December 31) after the initial term, and after any succeeding one-year term, with adjustments in mailbox availability and cost as provided in this Agreement unless: (a) the City notifies the District on or before October 31 prior to the succeeding one-year term that it has elected to terminate the Agreement at the conclusion of the then-current term; or (b) the District notifies the City on or before March 31 prior to the succeeding one-year term that it has elected to terminate the Agreement at the conclusion of the then-current term. The District and the City understand and agree that no reason or cause shall be required for either party's election to terminate the Agreement as provided in this section 2.1.

2.2 Notwithstanding the terms of section 2.1 above, if either party is in breach of an obligation or covenant under this Agreement, the non-breaching party may give written notice to the breaching party describing the breach and demanding that it be cured. If the breach is not cured within thirty (30) days after the breaching party's receipt of said notice, the non-breaching party may immediately terminate the Agreement and avail itself of any and all remedies available at law or in equity.

2.3 The parties understand and agree that the City's e-mail records and associated attachments are the property of the City. Upon the termination of this Agreement for any reason, the District will provide all Exchange data to the City in a mutually agreed upon format and will provide services to transfer data to the City. Following written confirmation by the City that all data files are intact, complete, and not corrupted, the District will destroy all original data files, data backups, and relevant backup file indexes from all storage media.

3. **Obligations of District.** The District shall host the City's e-mail for the "fcgov.com," "ci.fort-collins.co.us" and "poudrelibraries.org" domains on District servers in Microsoft Exchange 2007, or any new version of Microsoft Exchange, as may be determined from time to time by mutual agreement of the parties as provided in this Agreement. The parties understand and agree that the District's obligations under this Agreement are for services only, and this Agreement shall not establish any rights

of the City with respect to equipment, materials or other property (except for the City's e-mails stored on the District's servers).

3.1 The District's hosting services shall consist of: (a) providing basic Exchange client access and/or Outlook Web Access to the number of mailboxes for City use as provided in this Agreement, with maximum storage space equal to an average of 2 GB per mailbox, except as may be modified pursuant to paragraph 4.3 below; (b) conducting annual audits of the City's mailbox usage as provided in this Agreement; (c) storage backup; (d) spam blocking; (e) anti-virus scanning; (f) maintaining connection and compatibility of District servers hosting the City's mailboxes to the Fort Collins Community Network; (g) attachment filtering on inbound and outbound e-mail addresses and associated aliases; (h) e-mail encryption; (i) listserv functionality; (j) standard Microsoft Exchange patching; (k) infrastructure maintenance services to support e-mail synchronization with Blackberry and a limited set of other mobile devices; and (l) other services as specified in this Agreement.

3.2 The District's hosting services shall not include: (a) domains not specified in this Agreement; (b) management, maintenance, repair or any other service on any end-user device; (c) management, maintenance, repair or any other service beyond the servers and related systems owned by the District; (d) any liability for loss of data related to e-mail usage.

3.3 The District shall take reasonable steps to maintain the security of its network and data systems. Policies, controls, infrastructure, and operational procedures will be updated and revised as appropriate to protect the City's e-mail assets from unauthorized access. Any material breach of security pertinent to the City's interest will be reported to the City within 24 hours of event identification.

3.4 The District shall support the City's Human Resources Department in the processes related to personnel investigations. Upon written requests from authorized City Human Resources staff, the District will restore mail boxes from backup media, make City employee mailbox copies available to other authorized personnel, develop reports from e-mail transaction logs, and otherwise assist investigations.

3.5 Upon request, the District shall advise the City on whether specified end-user smartphone products are compatible with the version of Microsoft Exchange on District servers hosting the City's e-mail.

3.6 The District shall delete all City e-mail that is on the District's servers for more than 90 days. Notwithstanding the immediately preceding sentence, the District shall maintain all City e-mail in storage that is or may be subject to discovery in litigation if: (a) the City has notified the District in writing that specifically identified e-mail on the District's servers is or may be subject to discovery in litigation; or (b) the District has located e-mail on its servers pursuant to a word search the City has requested and advised the District in writing is intended to identify e-mail that is or may be subject to discovery in litigation. The District's obligation under this section 3.4 to maintain City e-mail in storage that is or may be subject to discovery in litigation shall continue until the City otherwise advises the District in writing or until this Agreement is terminated (in which case the District shall provide copies of the subject e-mail to the City in electronic form on one or more compact disks or another storage device).

3.7 The District shall use commercially practical and reasonable efforts consistent with industry standards to maintain accessibility to the City's mailboxes and e-mail on the District's servers 24 hours per day, seven days per week, except during periods of scheduled maintenance from 6:00 p.m. to 5:00 a.m. Mountain Time on Sunday of the weekend prior to the fourth Tuesday of every month.

The District shall have no liability for damages that may result directly or indirectly from any inability to access the City's mailboxes and/or e-mail as specified in the immediately preceding sentence.

3.8 The District, through its IT Help Desk at (970) 490-3020, shall use commercially practical and reasonable efforts consistent with industry standards to resolve problems affecting City e-mail caused by the District's servers. The District shall have no liability for damages that may result directly or indirectly from any failure to resolve such problems, or to resolve such problems within any particular period of time.

3.8.1 In order to help resolve problems affecting City e-mail caused by the District's servers as effectively and efficiently as possible, all technical communications between the parties regarding such problems shall be conducted by the parties' respective IT Help Desks, unless the District otherwise directs in a particular case.

3.8.1.1 The District IT Help Desk shall create a ticket for each problem referred to it by the City IT Help Desk, and shall provide the City IT Help Desk with a written notification advising it as to when and how the problem was addressed.

3.8.1.2 For problems of an ongoing nature and/or problems that require more than three days to resolve, the District IT Help Desk shall provide daily progress updates and other information to the City IT Help Desk, which the City IT Help Desk is expected to communicate to end users and other interested City officials.

3.8.2 Regular business hours for the District's IT Help Desk shall be Monday through Friday (except holidays as indicated on the District's School Calendar) from 7:00 a.m. to 5:00 p.m. Mountain Time.

3.8.2.1 District IT Help Desk staff shall be available on a first come, first served basis during regular business hours to address problems affecting City e-mail caused by the District's servers.

3.8.2.2 For problems affecting City e-mail caused by the District's servers that need to be addressed outside of regular business hours, District IT personnel shall use all reasonable means to respond within one hour of the call being placed to report the problem.

3.8.3 In the event of any disagreement as to whether a problem affecting City e-mail is caused by the District's servers or by one or more end-user devices (for which the City's IT Help Desk is responsible), the parties shall meet, confer and share relevant information in a good-faith effort to resolve the disagreement. In the event such process does not resolve the disagreement, a final determination on the matter shall be made by the District's Director of Information Technology.

3.9 For the initial term of this Agreement (through December 31, 2010), the District shall provide 1,890 mailboxes for e-mail on the City's "fcgov.com," "ci.fort-collins.co.us" and "poudrelibraries.org" domains at a cost of Seventeen Thousand Six Hundred Ninety Four Dollars (\$17,694.00) to cover operations and maintenance. This cost is calculated by multiplying 1,800 (the number of mailboxes the District has estimated the City will require through December 31, 2010) by Nine Dollars and Eighty Three Cents (\$9.83), which is one-half of the annual per-mailbox cost. The number of mailboxes actually provided is 105% of the District's 1,800 estimate.

3.10 On or before October 1, 2010, and on or before October 1 of each subsequent year this Agreement is in effect, the District shall: (a) conduct an audit of the City's actual mailbox usage

during the year; (b) provide the City with a written estimate of the number of mailboxes the City will require throughout the succeeding year (January 1 through December 31) for its “fcgov.com,” “ci.fort-collins.co.us” and “poudrelibraries.org” domains (poudrelibraries.org will only be maintained as a City domain through the end of 2010); and (c) provide the City with a written statement of the per-mailbox cost of hosting the City’s e-mail on District Microsoft Exchange servers throughout the succeeding year (January 1 through December 31). After receiving the October 1 audit, the parties acknowledge and agree that the City may modify the number of mailboxes and domains it desires to be hosted on the District’s servers for the succeeding year.

3.10.1 The per-mailbox cost shall be calculated each year by dividing the total estimated cost of operating and maintaining all District and City mailboxes on the District’s servers throughout the succeeding year by the estimated number of District and City mailboxes on the District’s servers that will be receiving e-mail service. At the time of the October 1 audit the District will share with the City the data and calculations used in determining the per-mailbox cost each year.

3.10.2 In determining the estimated number of District and City mailboxes on the District’s servers that will be receiving e-mail service in a succeeding year, mailboxes used by temporary and seasonal employees shall be counted as half a mailbox.

3.10.3 The parties understand and agree that the estimated number of City mailboxes on the District’s servers is for calculating the annual cost of hosting the City’s e-mail, that the actual number of mailboxes the City shall be entitled to use for such annual cost is 105% of the estimated number, and that the City may purchase the use of mailboxes in excess of 105% of the estimated number any time at the then-current per-mailbox cost.

3.11 Unless the City has timely notified the District that it has elected to terminate the Agreement as provided in section 2.1 above, the District shall invoice the City on or before November 30 for e-mail hosting services to be provided throughout the succeeding year in an amount equal to: (a) the actual number of mailboxes used by the City during the then-current year, as determined by the District’s October 1 audit; plus or minus (b) the number of mailboxes the City has advised the District in writing it wishes to have added to or subtracted from the number determined by the audit, if any; multiplied by (c) the per-mailbox cost for the succeeding year. The parties understand and agree that the actual number of mailboxes the City shall be entitled to use for the invoiced cost of e-mail hosting services throughout the succeeding year is 105% of the number of mailboxes used to calculate the invoiced amount.

3.12 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE DISTRICT MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED (THROUGH COURSE OF DEALING OR OTHERWISE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED AND STATUTORY REPRESENTATIONS, WARRANTIES AND GUARANTEES OF MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

4. Obligations of City.

4.1 Within 20 days of the execution of this Agreement, the City shall pay the District Forty Six Thousand Three Hundred Two Dollars (\$46,302.00). This amount is the sum of (a) a one-time charge of Twenty Eight Thousand Six Hundred Eight Dollars (\$28,608.00) to cover the cost of equipment to support the District’s e-mail hosting services, and (b) Seventeen Thousand Six Hundred Ninety Four Dollars (\$17,694.00) calculated as described in section 3.9 above to cover the cost of mailbox operations and maintenance.

4.2 On or before October 31, 2010 and on or before October 31 of each subsequent year this Agreement is in effect, the City shall either (a) notify the District that it has elected to terminate the Agreement at the conclusion of the then-current term as provided in section 2.1 above, or (b) pursuant to section 3.10 above, notify the District of the number of mailboxes it will require throughout the succeeding year (January 1 through December 31).

4.3 The City shall pay each District invoice as described in section 3.11 above for e-mail hosting services to be provided throughout the succeeding year (January 1 through December 31) within 30 days of receipt. If the City's total storage space usage exceeds an average of 2 GB per mailbox, the City shall pay an additional cost to be negotiated by the parties when the need arises.

4.4 The City shall be responsible for: (a) purchasing, operating and maintaining all end-user devices on which its e-mail will be viewed, sent and received, as well as all related equipment, systems and networks; (b) complying with all Microsoft and other licensing requirements applicable to end-user devices and all related equipment, systems and networks; (c) determining, after consulting with the District, the compatibility of its end-user smartphone products with the version of Microsoft Exchange on the District's servers hosting the City's e-mail; (d) maintaining connection and compatibility of its end-user devices to the Fort Collins Community Network; and (e) notifying the District in writing of City e-mail that is or may be subject to discovery in litigation and therefore must be maintained in storage on the District's servers beyond the normal 90-day retention period, and when said e-mails may be deleted.

4.5 In utilizing the District's e-mail hosting services, the City shall not: (a) copy, duplicate, transmit, compile or mirror any proprietary District server software, including but not limited to custom scripting, security robots, log utilities, virtual installation robots, account maintenance software, and any other utilities installed on the District's servers; (b) compromise the security or tamper with system resources on District servers, computers or other information technology; (c) engage in unauthorized access to or use of District data, systems or networks, including any attempts to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures; (d) engage in unauthorized monitoring of District data or traffic on any District network or system; (e) deliberately attempt to overload the District's e-mail system; (f) forge any TCP-IP packet header or any part of the header information in an e-mail or a newsgroup posting; or (g) intentionally or recklessly transmit files containing a computer virus or corrupted data.

4.6 The City IT Help Desk shall: (a) notify the District IT Help Desk of problems affecting City e-mail caused by the District's servers, and serve as the City's point of contact with the District for the resolution of such problems; (b) provide information and assistance as may be requested by the District and its subcontractors to resolve problems affecting City e-mail caused by the District's servers; (c) communicate to end users and other interested City officials progress updates and other information received from the District IT Help Desk concerning problems of an ongoing nature and/or problems that require an unusually long period of time to resolve

5. Lawful Use/Monitoring.

5.1 City e-mail use on District servers shall be for lawful purposes only. Sending or soliciting the receipt of any communication, data or other material via e-mail (including links or other methods of connecting to external sites) in violation of any federal, state or local law is strictly prohibited. This prohibition includes but is not limited to violation of laws involving copyright, unlawful threats of death or serious bodily injury, unlawful threats to destroy or damage property, or child pornography. The parties agree and understand that certain authorized personnel within the City's Police Department will utilize the e-mail system in the course of criminal investigations. Consequently, the content of messages and attached documents are excluded from the general business use restrictions outlined above.

5.2 The District assumes no responsibility and shall have no liability for the content of City e-mail on District servers.

5.3 Although the District will not monitor City e-mails for content, the District may monitor and investigate City e-mails in connection with the maintenance and troubleshooting of the e-mail system on its servers, which may result in District IT personnel and subcontractors viewing City e-mails. Accordingly, users of the City's e-mail system shall have no expectation of privacy with respect to e-mails sent or received on the system. District IT personnel and subcontractors shall report to the City's Chief Information Officer legal violations discovered in the course of their maintenance and troubleshooting operations as required by law.

6. Confidentiality and Privacy Policy. Notwithstanding Section 5.3 above, each party agrees to use good faith efforts, and at least the same care that it uses to protect its own confidential information of like importance, to prevent unauthorized dissemination or disclosure of the other party's confidential information both during and after the term of this Agreement. In addition, each party shall use the other party's confidential information solely as necessary for the performance of this Agreement. Confidential information includes (a) non-public information concerning either party; (b) either party's research, development, customer data, and employee data unless and until publicly announced; (c) the City's billing information; (d) any information designated as confidential in writing at or prior to disclosure; (e) any legal matters; and (f) any information otherwise disclosed in a manner consistent with its confidential nature. The restrictions in this Section shall not apply to information which is required to be disclosed by applicable law, including the Colorado Open Records Act. Release of any information or records will be under the guidance and approval of the City Attorney. The District values the right to privacy of the City's employees, customers, and citizens. Except as provided herein, the District will comply with all applicable laws relating to personal, confidential, and financial information and will not share any such personal, confidential, financial or other information with any other companies, governmental entity, or any third party without the express written consent of the City. The District will take all commercially reasonable steps to insure the strict confidentiality of any personal or financial information in the District's custody.

7. Microsoft Exchange Upgrades/Changes. The parties understand and agree that the District's obligation under this Agreement for hosting City e-mail involves the use of Microsoft Exchange 2007 on District servers. Any change in the version of Microsoft Exchange used on District servers to host City e-mail shall be made only upon mutual agreement of the parties. Under no circumstances shall any change to a new version of Microsoft Exchange be made less than one year after such new version has been released to market by Microsoft.

8. Notices. All notices required or allowed under this Agreement shall be in writing and shall be either: (a) hand-delivered; or (b) sent via certified mail, return receipt requested and postage prepaid, addressed to the other party as set forth below; or (c) sent via e-mail to the e-mail address of the other party as set forth below.

Notices to District: Poudre School District R-1
Attn: Director of Information Technology
2413 LaPorte Avenue
Fort Collins, CO 80521
E-Mail: teresa@psdschools.org

City of Fort Collins
Attn: City Manager
300 LaPorte Avenue
PO Box 580
Fort Collins, CO 80522
E-Mail:
datteberry@fcgov.com

City of Fort Collins
Attn: Chief Information Officer
300 LaPorte Avenue
P.O. Box 580
Fort Collins, CO 80522
E-Mail: tvosburg@fcgov.com

9. **Miscellaneous.**

9.1 **No Assignment.** Neither party shall assign this Agreement or any of its rights, interests or obligations under this Agreement without the prior written consent of the other party, which consent may be withheld for any reason or no reason as determined by the other party in its sole discretion.

9.2 **No Waiver.** The parties agree that no assent or waiver, express or implied, to any breach of any one or more of the covenants of this Agreement shall be construed as or deemed to be an assent to or a waiver of any subsequent breach.

9.3 **Amendment or Modification.** No amendment or modification of this Agreement shall be valid unless set forth in writing and executed by the parties in the same manner and with the same formality as was done for this Agreement.

9.4 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

9.5 **No Third-Party Beneficiary.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the District and the City. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person other than the District or the City. It is the express intent of the parties that any person receiving services or benefits pursuant to this Agreement shall be deemed an incidental beneficiary only.

9.6 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties regarding the subject matter addressed herein and supersedes all prior agreements, whether oral or written, pertaining to said subject matter.

IN WITNESS WHEREOF, the District and the City have signed this Agreement with the intent that it be effective as of the date first set forth above.

POUDRE SCHOOL DISTRICT R-1

By: _____
Superintendent of Schools

CITY OF FORT COLLINS, COLORADO

By: _____
City Manager

ATTEST:

Wanda Kracijek, City Clerk

APPROVED AS TO FORM:

Assistant City Attorney