

RESOLUTION NO. 2591

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF TOLLESON, ARIZONA, APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TOLLESON AND THE CITY OF PHOENIX FOR RADIO SHOP SERVICES.

WHEREAS, the City of Tolleson desires to enter into an Intergovernmental Agreement (the "Agreement") with the City of Phoenix to obtain maintenance and repair services for its public safety radio communications equipment; and

WHEREAS, the City of Phoenix has the capacity and expertise through its Information Technology Services Department Wireless Communications Group to provide such services.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TOLLESON, ARIZONA, as follows:

Section 1. The recitals above are hereby incorporated as if fully set forth herein.

Section 2. The term of this Agreement will commence on the effective date and shall be renewed automatically each year for a one-year term.

Section 3. The Agreement between the City of Tolleson and the City of Phoenix relating to radio shop services is hereby approved substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

Section 4. The Mayor, City Manager, City Clerk and City Attorney are hereby authorized and directed to take all steps necessary to cause the execution and delivery of this Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the City of Tolleson, Arizona, on this 10th day of December, 2024.

Juan F. Rodriguez, Mayor

ATTEST: _____
Crystal Zamora, City Clerk

APPROVED AS TO FORM: _____
Justin Pierce, City Attorney

EXHIBIT A

TO

RESOLUTION NO. 2591

[Intergovernmental Agreement]

See following pages.

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF PHOENIX
AND THE CITY OF TOLLESON**

This Intergovernmental Agreement (“IGA”) is entered into and made effective as of the date of the last signature below (“Effective Date”) by and between the City of Phoenix, an Arizona municipal corporation (“PHOENIX”), and the City of TOLLESON, an Arizona municipal corporation, (“TOLLESON”), (collectively, the “party” or “parties”).

RECITALS

A. TOLLESON wishes to obtain from PHOENIX certain maintenance and repair services for its public safety mobile, portable, and associated ancillary radio communications equipment.

B. PHOENIX, through its Information Technology Services Department Wireless Communications Group (aka Radio Shop), is willing to provide such services to TOLLESON subject to the terms and conditions of this IGA.

C. For their mutual benefits and in consideration of the covenants, conditions, and promises set forth in this IGA, the parties agree as follows.

AGREEMENT

1. Scope of Services

1.1 PHOENIX agrees to provide, and TOLLESON agrees to accept, public safety radio subscriber equipment maintenance and repair services (“Services”) on an as-needed basis for a fee as provided below. Services may include scheduled maintenance (annual inspection and repair) and unscheduled maintenance for out-of-warranty equipment that has failed or malfunctioned. PHOENIX may refuse to accept for Services equipment that PHOENIX deems, in its sole and absolute discretion, to be of non-serviceable conditions.

1.2 Unless the parties otherwise agreed in writing, PHOENIX will perform the Services on-site at its service center located at 2441 South 22nd Avenue, Phoenix, AZ 85009-6998, during normal business hours from 7:00 a.m. to 3:30 p.m., Monday through Friday. TOLLESON is responsible for the costs of delivering its equipment to and retrieving the same from the PHOENIX service center location during normal business hours as provided above. After-hour or special requests for Services are available by contacting PHOENIX at (602) 262-4444. Services performed at TOLLESON’s request that are outside normal business hours or at a location different than the service center listed above will incur additional overtime charges, including travel time.

1.3 For equipment to be supported under this IGA, TOLLESON will submit to PHOENIX a written service request that includes the following information for each unit.

Multiple units may be combined in a single service request, but information for each unit must be separately listed.

- Unit make, model, serial number, and manufacturer.
- The department using the unit.
- Point of contact name and telephone number.
- A unit inventory number, if known (to be assigned by PHOENIX).
- Vehicle number for mobile equipment.
- Programming information, such as channel number, talk group, programming template code, system ID, firmware version, or hardware version.
- Any other information relating to the unit as needed for PHOENIX to perform the Services.

1.4 It is TOLLESON's responsibility to ensure that equipment submitted for Services under this IGA operate on frequencies that are properly licensed through the Federal Communications Commission ("FCC"). For equipment operating on frequencies that are licensed through a third-party, TOLLESON shall provide PHOENIX with a signed Letter of Authorization from the applicable third-party showing the equipment have been properly licensed by the FCC to operate on the corresponding frequencies.

2. Term of Agreement

2.1 This IGA will commence on the Effective Date and shall be renewed automatically each year for a one-year term, unless terminated earlier in writing by either party upon providing the other party with at least 60 days advanced notice.

3. Fees, Costs, and Payment

3.1 In consideration of the Services provided by PHOENIX, TOLLESON agrees to pay PHOENIX for services rendered on a time and material basis for each unit repaired in accordance with fees stated in Exhibit A. Labor rates are subject to change without prior notice. Labor rates do not include the costs of any parts or materials provided by PHOENIX in conjunction with the Services. In addition to labor, TOLLESON will reimburse PHOENIX at fair market price without markups for the costs of any parts or materials necessary to return the unit to fully operational status.

3.2 TOLLESON is responsible for all applicable taxes, including sales or use taxes, levied or imposed in connection with the Services provided pursuant to this IGA.

3.3 PHOENIX will invoice TOLLESON once each month as required whenever a service transaction has occurred. TOLLESON shall pay the invoiced amount within 30 days upon receipt of the invoice and remit payment to:

City of Phoenix
Central Account Receivable
P.O Box 78815
Phoenix, AZ 85062-8815

4. Disclaimer of Warranty and Limitation of Liability

4.1 PHOENIX represents and warrants that Services will be performed in a professional workmanlike manner by PHOENIX personnel having a level of skill and experience required for such work. As TOLLESON's sole and exclusive remedy for any warranty claim pursuant to this section, PHOENIX will reperform the Services at no additional costs to TOLLESON to correct the deficiencies within a reasonable time, taking into account the availability of PHOENIX resources, the priorities of Services for other equipment, and the potential operational impact to TOLLESON. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, PHOENIX MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED PURSUANT TO THIS IGA, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4.2 PHOENIX is not responsible for any claims, losses, or damages resulting from malfunctions or defects of third-party equipment, or errors caused by TOLLESON's personnel or operating environments. PHOENIX does not warrant third-party equipment; TOLLESON is responsible for obtaining warranty coverage, at its own expense, for such equipment.

4.3 The cumulative liability of PHOENIX to TOLLESON for all claims arising out of the performance or nonperformance of Services pursuant to this IGA, including any cause of action in contract, tort, or strict liability, shall not exceed the amount of fees paid or payable by TOLLESON for the Services giving rise to the claims. In no event shall either party be liable to the other party for any indirect, incidental, consequential, special, or exemplary damages of whatever kind and however caused, even if the party has been advised of the possibility of such potential loss or damage.

5. Indemnification

5.1 Each party ("Indemnitor") will save and hold harmless the other party and its officials, officers, agents, servants, and employees ("Indemnatee"), from any and all claims, demands, suits, actions proceedings, losses, costs and damages of every kind, including reasonable attorneys' fees, which may be made or brought against Indemnatee for loss or damage to property, bodily injury, or death ("Claim") to the extent that such Claim is the result of any error, omission, or negligent act of Indemnitor or its officials, officers, agents, servants, employees, or representatives for which Indemnitor is legally liable, arising out of or incident to

the performance of this IGA, except for occurrences for which Indemnatee has sole responsibility.

5.2 As a condition to the foregoing indemnity obligations, Indemnatee will provide Indemnitor with prompt notice of the Claim and will reasonably cooperate with Indemnitor in connection with any such Claim. Indemnitor will be entitled to control the processing of the Claim and to defend or settle the Claim in its sole discretion with counsel of its own choosing.

6. Employment and Organizational Disclaimer

6.1 This IGA is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture or partnership, or form a business association or organization of any kind between the parties. The rights and obligations of the parties will be only those expressly stated in this IGA. Each party agrees that a person whom it engages in performance under this IGA is not an employee of the other party; and no rights or benefits accrue to such person under the other party's civil service, retirement, or personnel rules. Each party will have total responsibility for all salaries, wages, bonuses, retirement, withholding, workman's compensation, occupational disease compensation, unemployment compensations, other employee benefits, and all taxes and premiums appurtenant thereto concerning any such person and will save and hold the other party harmless with respect thereto.

7. Independent Contractor's Status

7.1 Each party is and will remain an independent contractor of the other party.

8. Conflicts of Interest

8.1 The parties acknowledge this IGA is subject to cancellation pursuant to Arizona Revised Statutes § 38-511.

9. Assignment

9.1 Neither party will have the power to assign its rights and obligations under this IGA without the prior written consent of the other party; and any attempt to assign without such prior written consent will be void.

10. Amendments

10.1 This IGA supersedes and replaces all prior agreements, oral or written, and represents the complete understanding between the parties with respect to its subject matter. No alteration or variation of the terms of this IGA will be binding on the parties, unless such change is in writing and duly signed by each party.

11. Notices

11.1 Notice required or permitted under this IGA will be in writing and delivered in person, sent via email with receipt confirmation, sent by United States registered or certified mail, or deposited with a commercial air courier or express service addressed as follows:

If intended for City of Phoenix:

City of Phoenix Information Technology Services Department
Attn: Wireless Communications Superintendent
2441 South 22nd Avenue
Phoenix, AZ 85009-6998
Telephone: (602) 262-4444
Email: ITS.radioservice@phoenix.gov

With copy to:

City of Phoenix Law Department
Attn: ITS Legal Counsel
200 West Washington Street, Suite 1300
Phoenix, AZ 85003-1611

If intended for City of TOLLESON:

City of TOLLESON
Attn: Crystal Zamora, City Clerk
9055 W. Van Buren Street
Tolleson, Arizona 85353
Telephone: (623) 936-7111
Email: tolleson.cityclerk@tolleson.az.gov

With copy to:

Pierce Coleman PLLC
Attn: Justin Pierce, City Attorney
17851 North 85th Street, Suite 175
Scottsdale, Arizona 85255

11.2 Notice will be deemed received at the time it is personally served, on the day it is sent by email, on the 10th calendar day after it is deposited in the United States mail, or on the 2nd calendar day after it is deposited with any commercial air courier or express service. Any time period stated in a notice will be computed from the date the notice is deemed received.

12. Force Majeure

12.1 Either party shall be excused from performance under this IGA for any period of time that the party is prevented from performing its obligations as a result of a

government declared natural disaster, war, riot, civil disobedience, court order, labor dispute, or other cause beyond the party's reasonable control. Such non-performance shall not constitute grounds for default.

13. Continuing During Disputes

13.1 The parties agree that notwithstanding the existence of any dispute between the parties, insofar as is possible under the terms of this IGA, each party will continue to perform its obligations during the continuation of any such dispute, unless enjoined and prohibited by an Arizona court.

14. Delay in Exercising Contract Remedy

14.1 Failure or delay by either party to exercise any right, power, or privilege will not be deemed a waiver thereof.

15. Governing Law

15.1 This IGA is governed by the laws of the State of Arizona.

CITY OF TOLLESON, an Arizona municipal corporation
Reyes E. Medrano, Jr., City Manager

CITY OF PHOENIX, a municipal corporation
Jeff Barton, City Manager

By: _____

By: _____

APPROVED AS TO FORM:

In accordance with A.R.S. Sec, 11-952, this Agreement has been reviewed by the undersigned attorney who has determined that this Agreement is in proper form and within the powers and authority granted to the City of TOLLESON under the laws of the State of Arizona.

Justin Pierce, City Attorney

By: _____

ATTEST:

Crystal Zamora, City Clerk

Date

APPROVED AS TO FORM:

In accordance with A.R.S. Sec, 11-952, this Agreement has been reviewed by the undersigned attorney who has determined that this Agreement is in proper form and within the powers and authority granted to the City of Phoenix under the laws of the State of Arizona.

Julie M. Kriegh, City Attorney

By: _____

Assistant Chief Counsel

ATTEST:

City Clerk

Date

EXHIBIT A

Labor Rates for Radio Shop Services

- A. Shop installation and repair services: \$170 per hour
- B. Field site installation and repair services: \$170 per hour
- C. Engineering and drafting services: \$170 per hour
- D. Overtime/emergency call out: 1.5 times standard rate

Note 1: Parts and consumable material are not included in the above labor rates.

Note 2: Prices are subject to change without notice.