

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

cc: 9C
Amend No. _____

Date prepared: October 20, 2010

Council Meeting Date: November 16, 2010

TO: Carl Swenson, City Manager
THROUGH: Susan K. Thorpe, Deputy City Manager *SKT*
FROM: John Imig, IT Director/Chief Technology Officer *JWI*
SUBJECT: Intergovernmental Agreement with the cities of Surprise and El Mirage to Provide Radio Subscriber Support Services

RECOMMENDATION:

Discussion and possible action to authorize the City Manager to execute the Intergovernmental Agreement (IGA) between the City of Peoria, the City of Surprise, and the City of El Mirage for the City of Peoria to provide radio subscriber support services.

SUMMARY:

The cities of Peoria, Surprise, and El Mirage are all members of the Regional Wireless Cooperative Radio System (RWC). Members of the RWC are each responsible for the programming, updates and maintenance required on their subscriber equipment (i.e. mobile, portable and base-station (console) radios). Peoria has the equipment and staff expertise required to provide subscriber maintenance services such as programming, encryption key loading and template development. Surprise and El Mirage are currently unable to perform these services in house.

As a key member of the RWC, Peoria has provided occasional support to other Cities, including Surprise and El Mirage, when necessary. This IGA merely establishes formal processes, costs and invoicing methods to provide charged services on an hourly basis.

FISCAL NOTE:

Any costs associated with providing services to these Cities will be recuperated through billing on an hourly basis.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 11810 LIC. # _____
Action Date: _____

Some revenue may be generated from this IGA but IT is unable to make any projections without history to base them on.

CONTACT: John Imig, IT Director, 623-773-7253

**RADIO SUBSCRIBER SUPPORT SERVICES
INTERGOVERNMENTAL AGREEMENT BETWEEN AND AMONG
THE CITY OF PEORIA, THE CITY OF SURPRISE,
AND THE CITY OF EL MIRAGE**

THIS RADIO SUBSCRIBER SUPPORT SERVICES INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into as of the day and date set forth on the respective signature pages between and among the City of Peoria (“Peoria”), the City of Surprise (“Surprise”), and the City of El Mirage (“El Mirage”); individually “a Party” and collectively “the Parties.”

IN CONSIDERATION of the covenants, promises, terms and conditions set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Purpose and Intent of Agreement

- 1.1 The purpose of this Agreement is to provide radio subscriber support services such as programming, key loading, and template development, and other services as necessary and mutually agreeable for municipalities lacking necessary in-house equipment or expertise to provide these services.
- 1.2 This Agreement shall not become effective or binding as to any Party unless and until all Parties duly approve and execute this Agreement, and at such time as the last Party approves and executes this Agreement.
- 1.3 This agreement shall be effective and binding for a term of five (5) years unless sooner terminated as set forth herein.

2. Responsibilities of the Parties

- 2.1 Peoria shall provide the following radio subscriber support services to Surprise and El Mirage:
 - 2.1.1 Programming
 - 2.1.2 Key Loading
 - 2.1.3 Template Development
- 2.2 For the services described in Subsection 2.1, Peoria shall charge the following costs:
 - 2.2.1 \$75 per hour, with a one-hour minimum.

- 2.2.2 After the first hour, services will be calculated in quarter-hour increments (at \$18.75 per every 15 minutes).
- 2.2.3 For on-site service, there will be a trip charge of \$75, plus mileage at the current IRS mileage reimbursement rate at the time of service.
- 2.3 On a quarterly basis, Peoria shall submit a bill to any Party for its costs incurred pursuant to Subsection 2.2 during the past three months.
- 2.4 A Party receiving a bill from Peoria pursuant to Subsection 2.3 shall pay such bill within 30 days of receipt. If the recipient of a bill has a question or concern about the bill, the Party and Peoria shall attempt to resolve the issue. If a resolution is not achieved, the Party and Peoria shall seek to resolve the dispute as described herein.
- 2.5 Nothing in this Agreement will act as an abrogation of the budgeting and appropriation authority of the legislative and/or governing bodies of the respective Parties.

3. *Hold Harmless and Indemnification*

- 3.1 Each Party agrees that it will be responsible for any liability or loss that may be incurred as a result of any claim, demand, cost or judgment made against that Party to the extent arising from any negligent, reckless or intentional act or omission by any of that Party's employees, agents or servants in connection with work or responsibilities performed pursuant to this Agreement.
- 3.2 Each Party shall be solely responsible for the costs of repair of damage to equipment caused by that Party.
- 3.3 Each Party (an "Indemnitor") shall indemnify, hold harmless, and defend each other Party (the "Indemnified Parties") against all claims and lawsuits resulting from any claim, demand, cost or judgment made against the Indemnified Parties to the extent arising from any negligent, reckless or intentional act or omission by any of the Indemnitor's employees, agents, or servants in connection with work or responsibilities performed pursuant to this Agreement.
- 3.4 In the event of any lawsuit that names more than one Party as a defendant ("Defendant Party" or "Defendant Parties"), the Defendant Parties shall seek to secure an allocation of comparative negligence among themselves where appropriate and each Defendant Party shall provide contribution to each other Defendant Party to the extent of the comparative allocation.

3.5 The Parties further agree that they are not joint employers for the purpose of workers compensation coverage and that any Party assigned to carrying out the obligations of the Agreement shall remain an employee of such Party.

4. Insurance

4.1 The Parties mutually agree to provide for their respective financial responsibilities as respects liability arising out of this Agreement through either the purchase of insurance or the provision of a self-funded insurance program.

5. Agreement Modification and Integration

5.1 To be effective, any modification of this Agreement must be in writing and signed by the Parties.

5.2 This Agreement, including the attachments and any amendments and such other documents as are specifically incorporated by reference, represents the entire understanding of the Parties with respect to the matters contained herein. Oral or written commitments not contained herein shall have no force or effect and shall not alter any term or condition of this Agreement.

6. Termination of Agreement and Assignment

6.1 Termination

Any Party wishing to terminate participation prior to the end of the 5-year term must provide, not less than thirty (30) days prior, written notice of intent to terminate. Such notice shall be delivered to every other party.

6.2 Assignment

No party may assign its rights and obligations under this Agreement.

7. Disputes

All Parties to this Agreement shall make every effort to resolve disputes with the Parties involved. If settlement is not obtained, these parties shall consider mediation or arbitration.

8. No Third Party Rights Created

Nothing contained in this Agreement confers any right to any person or entity not a party to this Agreement.

9. General Terms

- 9.1 No member, official or employee of the any of the Parties may have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement that is prohibited by law. All Parties hereto acknowledge that this Agreement is subject to cancellation pursuant to the provisions of A.R.S. §38-511.
- 9.2 Each Party warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services.
- 9.3 No member, official or employee of any Party will be personally liable to the other Parties, or any successor in interest, in the event of any default or breach by that Party or for any amount which may become due to another Party, or on any obligation under the terms of this Agreement.
- 9.4 Except as otherwise expressly provided in this Agreement, any failure or delay by any Party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.
- 9.5 If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.
- 9.6 The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.
- 9.7 Pursuant to A.R.S. § 35-391.06 and 35-393.06, each party certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term “scrutinized business operations” shall have the meanings set forth in A.R.S. § 35-391 or and 35-393, as applicable. If it is determines that a party submitted a false certification, any other party may impose remedies as provided by law including cancellation or termination of this Agreement.
- 9.8 Each party warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A, which reads: “After December 31, 2007, every employer, after hiring an employee, shall verify the

employment eligibility of the employee through the E-Verify program.” A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Agreement and a party may be subject to penalties up to and including termination of the Agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO DO AFFIX THEIR SIGNATURES:

**{SIGNATURES OF THE RESPECTIVE PARTNERING AGENCIES ARE SET FORTH
ON THREE SEPARATE PAGES FOLLOWING THIS PAGE}**

CITY OF PEORIA

BY: _____

ITS: _____

DATE _____

ATTEST:

PEORIA CITY CLERK

CERTIFICATION BY LEGAL COUNSEL

The foregoing Radio Subscriber Support Services Intergovernmental Agreement between and among the City of Peoria, the City of Surprise, and the City of El Mirage is in proper form and is within the powers and authority of the City of Peoria granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

PEORIA CITY ATTORNEY

CITY OF SURPRISE

BY: _____

ITS: _____

DATE _____

ATTEST:

SURPRISE CITY CLERK

CERTIFICATION BY LEGAL COUNSEL

The foregoing Radio Subscriber Support Services Intergovernmental Agreement between and among the City of Peoria, the City of Surprise, and the City of El Mirage is in proper form and is within the powers and authority of the City of Surprise granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

SURPRISE CITY ATTORNEY

CITY OF EL MIRAGE

BY: _____

ITS: _____

DATE _____

ATTEST:

EL MIRAGE CITY CLERK

CERTIFICATION BY LEGAL COUNSEL

The foregoing Radio Subscriber Support Services Intergovernmental Agreement between and among the City of Peoria, the City of Surprise, and the City of El Mirage is in proper form and is within the powers and authority of the City of El Mirage granted under the laws of the State of Arizona.

APPROVED AS TO FORM AND AUTHORITY:

EL MIRAGE CITY ATTORNEY