



Contract Number: CT-IT-15*171
Effective Date: 1-20-15
Term Date: 1-19-2035
Cost: ✓
Revenue: _____
Total: _____ NTE: _____
Action: _____
Renewal By: 10-1-2034
Term: 1-19-2035
Reviewed by: JL

BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: January 20, 2015

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

The Intergovernmental Agreement between the City of Tucson and Pima County Regarding Transfer of Equipment and Property in Furtherance of the PCWIN Network allows PCWIN to transfer certain equipment (Exhibit A) to the City of Tucson at no cost to either party. As the City of Tucson and Pima County have been identified as the only authorized agencies to serve as Maintenance Providers to maintain the system and optimize the performance and availability of the PCWIN network, this equipment is needed for the City of Tucson to repair and maintain radios and equipment purchased by PCWIN and operating within the PCWIN network. The City of Tucson has agreed to accept ownership of the transferred equipment as well as all future costs related to same. The City of Tucson has also agreed to utilize Aeroflex for all work covered under warranty, as stipulated by the Standard Hardware Warranty (Exhibit B). Further, the City of Tucson has agreed to assume all obligations related to freight and other repair costs associated with the Transferred Equipment.

CONTRACT NUMBER (If applicable): CT-IT-1500000000000000171

STAFF RECOMMENDATION(S):

The Information Technology Department recommends that the Pima County Board of Supervisors adopt and the Chairman sign the Intergovernmental Agreement between the City of Tucson and Pima County regarding Transfer of Equipment and Property in Furtherance of the PCWIN Network.

CORPORATE HEADQUARTERS: Arizona

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To: CHH. 1-19-15 By Dept

CoB. 1-12-15

Addendum (3)

CLERK OF BOARD USE ONLY: BOS MTG. _____

ITEM NO. _____

PIMA COUNTY COST: **\$0.00** **and/or REVENUE TO PIMA COUNTY:****\$ 0.00**

FUNDING SOURCE(S): **N/A**

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

	<input type="checkbox"/>	YES	<input checked="" type="checkbox"/>	NO
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Board of Supervisors District:

1	<input type="checkbox"/>	2	<input type="checkbox"/>	3	<input type="checkbox"/>	4	<input type="checkbox"/>	5	<input type="checkbox"/>	All	<input checked="" type="checkbox"/>
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IMPACT:

IF APPROVED:

PCWIN will be authorized to transfer certain County-owned PCWIN equipment to the City of Tucson (Exhibit A), and the City of Tucson will have sufficient equipment to repair and maintain equipment to optimize the performance and availability of the PCWIN network.

IF DENIED:

PCWIN will not be permitted to transfer required equipment to the City of Tucson, and the City of Tucson will not have adequate equipment to repair and maintain equipment to optimize the performance and availability of the PCWIN network. Since the City of Tucson is the only other authorized agency to serve as a Maintenance Provider for PCWIN, there would be an increased demand on Pima County staff and resources, which could ultimately compromise the integrity of the PCWIN network.

DEPARTMENT NAME: **Information Technology**

CONTACT PERSON: **Julie K McWilliams** **TELEPHONE NO.:** **724-8066**



CONTRACT

AMENDMENT NO.

This number must appear on all invoices, correspondence and documents pertaining to this contract.

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE
CITY OF TUCSON AND PIMA COUNTY
REGARDING TRANSFER OF EQUIPMENT AND PROPERTY IN FURTHERANCE OF
THE PCWIN NETWORK**

This Intergovernmental Agreement (“IGA”) is entered into pursuant to A.R.S. § 11-951 et seq., by and between the City of Tucson (“City”), an Arizona municipal corporation, and Pima County, a body politic and corporate of the State of Arizona (“County”).

RECITALS

A. County has implemented a regional public safety communications network known as the Pima County Wireless Integrated Network ("PCWIN") in cooperation with City and other government entities. City and County have entered into multiple IGAs related to the City's participation in the PCWIN system.

B. City and County have been identified as the only authorized agencies to serve as Maintenance Providers to maintain the system and optimize the performance and availability of the PCWIN network;

C. Aeroflex is the only currently authorized vendor to supply and provide warranty service work on behalf of PCWIN (Exhibit B).

D. County has agreed to purchase all equipment for PCWIN.

E. County has agreed to transfer ownership of certain County-owned PCWIN equipment to City (Exhibit A—the “Transferred Equipment”).

F. City has agreed to accept ownership of the Transferred Equipment and to assume all future costs related to same. City further agrees to utilize Aeroflex for all work covered under warranty, and to assume all obligations related to freight and other repair costs associated with the Transferred Equipment.

G. City and County acknowledge that the PCWIN Cooperative is not a party to this IGA, and that neither party has any authority to obligate the PCWIN Cooperative.

AGREEMENT

NOW, THEREFORE, City and County, pursuant to the above, and in consideration of the matters and things hereinafter set forth, agree as follows:

SECTION 1. PURPOSE AND SCOPE: In order to accomplish the mutually beneficial equipment transfer arrangement, the parties enter into this IGA; the exhibits to which are subject to periodic amendment by the parties to reflect the current state of the Transferred Equipment between the parties. No party to this IGA has any right of use or ownership interest in the other party's equipment, except as specified in this IGA, as it may be amended from time to time.

SECTION 2. TERM AND TERMINATION: This IGA will be effective on the date executed by both City and County. Thereafter, this IGA will remain in effect for the earlier of 1) twenty (20) years, or 2) termination of the IGA to Operate, Maintain, Sustain, Improve and Finance the Pima County Wireless Integrated Network ("The PCWIN Cooperative IGA"), unless this IGA is sooner terminated as provided below.

The parties' participation in this IGA may be terminated only in the manner and to the extent set forth in Section 7 of the PCWIN Cooperative IGA. The parties to this IGA may only terminate their obligations to provide the use of property or assets under this IGA in the manner and to the extent set forth in Section 4.4 of Exhibit A to the PCWIN Cooperative IGA. Section 7 of the PCWIN IGA and Section 4.4 of Exhibit A to the PCWIN Cooperative IGA are hereby incorporated into this IGA by reference as if set forth fully herein.

This Section 2, and the indemnification and insurance obligations set forth in Section 8 below will survive termination of this IGA for any action or occurrence during the term of this IGA.

Each party has the right to terminate this IGA if the other party materially breaches its obligations by serving upon the other party no less than thirty (30) days' advance written notice of its intent to terminate. The notice of termination will have no effect if the breaching party cures its breach before the stated effective date of the termination. If the breach is of such a character as to require more than thirty (30) days to cure, the breaching party shall be in default only if it fails to initiate the cure within thirty (30) days; and thereafter diligently pursue the same to completion. All rights or remedies of the parties shall be cumulative and not exclusive.

SECTION 3. TERMS AND CONDITIONS:

A. County agrees to:

1. Deliver the Transferred Equipment (Exhibit A) to City no later than thirty (30) days after the effective date of this IGA.

2. County assumes all costs associated with the transfer of the Transferred Equipment to City.

B. City agrees to:

1. Assume ownership of the Transferred Equipment (Exhibit A).
2. Maintain and repair the Transferred Equipment for optimum effectiveness as outlined under the PCWIN Business Plan.
3. Utilize Aeroflex for all warranty work on the Transferred Equipment (Exhibit B).
4. Return the Aeroflex Test Set 3920B to Aeroflex no less than once each year for annual calibration. County purchased a sixty (60) month maintenance plan with the Aeroflex Test Set and City accepts transfer of the maintenance plan with the device. After expiration of the maintenance plan City shall be responsible for all costs associated with ongoing annual calibration of the Aeroflex Test Set.
5. Assume all future costs associated with the Transferred Equipment including but not limited to replacement, repair, service and freight.
6. Return and transfer all ownership of the Transferred Equipment to County in the event this IGA is terminated, City withdraws from the PCWIN program or City otherwise breaches any requirement of this Section 3.B.

SECTION 4. ADDITIONAL TRANSFERS: Any future transfer of additional equipment from County to City will be accomplished through a written Amendment to this IGA.

SECTION 5. COMPLIANCE WITH LAWS: The parties shall comply with all applicable state, local, and federal laws, including laws governing technology and software.

SECTION 6. PAYMENT & BILLING: City will not reimburse County for initial purchase cost of the Transferred Equipment and County will not seek reimbursement for same.

SECTION 7. PAYMENT DISPUTES: In the event of a dispute that cannot be resolved by comparison and reconciliation of cost records or through other negotiations, the parties shall resort to non-binding arbitration prior to the institution of legal action.

SECTION 8. INDEMNIFICATION & INSURANCE:

Each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage,

but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

Each party shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:

1. Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage.
2. Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage.
3. If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00.
4. If required by law, workers' compensation coverage including employees' liability coverage.
5. Each party shall be legally and financially responsible solely for its own workers' compensation obligations under the law in Arizona and each party agrees to waive rights of subrogation for workers' compensation cost. Employees shall be considered co-insured for purposes of workers compensation only. Each party shall have the obligation to notify its employees of the co-insurance requirement in this agreement.

Parties to this IGA shall provide thirty (30) days' written notice to all parties of cancellation, non-renewal or material change of coverage.

The above requirement may be alternatively met through self-insurance pursuant to A.R.S. §§ 11-261 and 11-981 or participation in an insurance risk pool under A.R.S. § 11.952.01, at no less than the minimal coverage levels set forth in this article. Parties to this IGA must provide thirty (30) days' written notice to all other parties of cancellation, non-renewal or material change of coverage.

SECTION 9. UNCONTROLLABLE FORCE: No party shall be considered to be in default in the performance of its obligations hereunder when failure of performance shall be due to an Uncontrollable Force. The term "Uncontrollable Force" shall mean any cause beyond the control of the party affected, including but not limited to failure of or threat of failure of facilities, flood, radioactive contamination, earthquake, storm, volcanic eruption, geohydrologic subsidence, fire, lightning, epidemic, sabotage, subversion, change in applicable laws or regulations, restraint by court order or public authority, and action or non-action by, or inability to obtain the necessary authorizations or approvals from, any governmental agency or authority, which by exercise of due

diligence it shall be unable to overcome. Nothing contained herein shall be construed so as to require a party to settle any strike or labor dispute in which it may be involved.

SECTION 10. LEGAL JURISDICTION: Nothing in this IGA shall be construed as either limiting or expanding the legal jurisdiction of either City or County.

SECTION 11. MISCELLANEOUS:

1. Americans with Disabilities Act Compliance. Each party shall comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. sections 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
2. Conflict of Interest. This IGA is subject to cancellation for conflict of interest pursuant to A.R.S. section 38-511, the pertinent provisions of which are incorporated into this IGA by reference.
3. Non-Appropriation. Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining a party's obligations under this IGA.
4. Non-Discrimination. The parties shall not discriminate against any City or County employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, sexual orientation, gender identity or national origin in the course of carrying out their duties pursuant to this IGA. The parties shall comply with the provisions of Executive Order 75-5, as amended by Executive Order 2009-09, which is incorporated into this IGA by reference, as if set forth in full herein.
5. Worker's Compensation. Each party shall comply with the notice requirement of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each party is solely responsible for the payment of Worker's Compensation benefits for its employees.
6. No Third Party Beneficiaries. Nothing in the provisions of this IGA is intended to create duties or obligations to or rights in third parties not parties to this IGA or to affect the legal liability of either party to the IGA by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.
7. Immigration and E-Verify. To the extent provisions of ARS §41-4401 are applicable, each party warrants that it will comply with all Federal Immigration laws and regulations that relate to its employees and that each complies with the E-Verify Program under A.R.S. Section 23-214(A).
8. Notice. Any notice required or permitted to be given under this IGA shall be in writing and shall be served by delivery or by certified mail upon the other party as

follows (or at such other address as may be identified by a party in writing to the other party) :

County:

Jesse Rodriguez
Chief Information Officer
Mailstop DT-BAB17-425
Tucson AZ 85701

City of Tucson:

R.C. Lewis
Director, General Services Department
City of Tucson
P.O. Box 27210
Tucson AZ 85726-7210

With copies to:

County Administrator
130 West Congress Street, 10th Floor
Tucson, Arizona 85701

Clerk of the Board
130 West Congress Street, 5th Floor
Tucson, Arizona 85701

SECTION 12. ENTIRE AGREEMENT. This document constitutes the entire Agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. This IGA shall not be modified, amended, altered or extended except through a written amendment signed by the parties.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have entered into this IGA this 29th day of December, 2014.

PIMA COUNTY
A body politic and corporate
of the State of Arizona

By: _____
Chair, Board of Supervisors

Date: _____

ATTEST:

Clerk of the Board of Supervisors

CITY OF TUCSON
A municipal corporation

By: Mark J. Tolman
Mayor

Date: December 29, 2014

ATTEST:

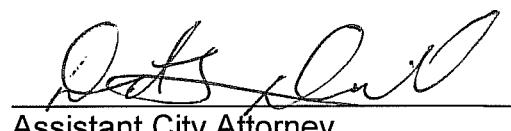
R. Riegel
City Clerk

Pursuant to A.R.S. section 11-952(D), the attorneys for the governmental entities that are the parties to this IGA have determined the foregoing is in proper form and is within the powers and authority of the parties as granted under the laws of the State of Arizona.



TOBIN ROSEN
Deputy County Attorney

Date: 11/5/14



Assistant City Attorney

Date: 12/29/14

EXHIBIT A

to Exhibit A to Resolution 22296

Equipment Scheduled for Transfer**From: Pima County**
To: City of Tucson

QUANTITY	DESCRIPTION	SERIAL/PART #	ESTIMATED VALUE
1	AeroFlex Test Set 3920B	S/N 100168162	\$43,884.84 ea.
1	Radio test breakout box	P/N RLN4460	\$310.88 ea.
2	Breakout box test cable	P/N PMKN4013C	\$72.00 ea.
5	Mobile programming cable	P/N HKN6184C	\$51.00 ea.
5	Portable programming cable	P/N PMKN4012B	\$75.00 ea.
4	Headset Kit	P/N RMN5058A	\$90.00 ea.
4	Portable Antenna	P/N NAF5085A	\$45.00 ea.

EXHIBIT B

to Exhibit A to Resolution No. 22296



Standard Hardware Warranty

THIS WARRANTY APPLIES ONLY TO PRODUCTS MANUFACTURED AT THE WICHITA, STEVENAGE AND KANSAS CITY LOCATIONS.

Aeroflex warrants, under customary use and service, the hardware product to be free from defects in material and workmanship for a period of ONE (1), TWO (2) or THREE (3) YEARS from the shipping date, depending on product. In addition, battery packs and external optional equipment has a 90-day warranty. This period shall be referred to as "The Standard Limited Warranty Period".

Aeroflex's obligation under this warranty is limited to replacing or repairing, at Aeroflex's option, free of charge except for certain freight charges as described herein, any defective part or parts of the instrument. If the instrument is found not to be defective in material or workmanship, or in the event the warranty claim is invalid because of failure to comply with the provisions herein, Aeroflex shall notify the customer and shall only repair or replace the instrument parts at customer's direction and expense.

The warranty does not apply to any instrument that has been subject to misuse, alteration, negligence, accident, shipping damage, improper installation, or improper operation, or that in any way has been tampered with or repaired by any person other than an authorized Aeroflex service organization or any employee thereof, or to any instrument whose serial number has been altered, defaced or removed.

Annual certified calibration is not included in the warranty.

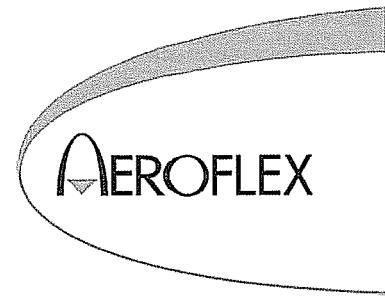
Aeroflex shall not be liable for any delay or failure to repair or furnish a replacement part, including but not limited to, delays resulting directly or indirectly from any governmental restriction, priority, or allocation, or any other governmental regulatory order or action, nor shall Aeroflex be liable for damages (direct, indirect, or consequential) by reason of the failure of the instrument to perform properly.

Aeroflex performed repairs shall be warranted from defective material and workmanship for NINETY (90) DAYS or until the end of the Standard Limited Warranty Period whichever is longer. Risk of loss or damage to Product returned to Aeroflex for repair or replacement shall be borne by customer until delivery to Aeroflex. Upon delivery of such product, Aeroflex shall assume the risk of loss or damage until such time as the product being repaired or replaced is returned and delivered to customer.

Customer shall pay all transportation costs for equipment or software shipped to Aeroflex for repair or replacement. Aeroflex shall pay all transportation costs associated with returning repaired or replaced product to customer.

This warranty shall, at Aeroflex's option, become void if the equipment ownership is transferred, unless the prior owner or the proposed owner obtains approval from Aeroflex of continuation of the warranty prior to the transfer of ownership.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE NOT SET FORTH IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ATS.



Standard Software Warranty

THIS WARRANTY APPLIES ONLY TO PRODUCTS MANUFACTURED AT THE WICHITA, STEVENAGE AND KANSAS CITY LOCATIONS.

ATS warrants that Software Products licensed to Customer shall, under normal use and service, and for a period of ninety (90) days from the date of shipment of the Software to Licensee (the "Standard Limited Warranty Period"), perform in all material respects in accordance with the published specifications for such Software as established by ATS. However, ATS does not warrant that the Software will operate uninterrupted or error free, operate in the combination with other software, meet Customer's requirements, or that its use will be uninterrupted.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE NOT SET FORTH IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ATS.

AEROFLEX, WICHITA
10200 West York Street
Wichita, KS 67215 (USA)

AEROFLEX, STEVENAGE
Longacres House
Six Hills Way
Stevenage SG1 2AN (UK)

AEROFLEX, WICHITA
14408 W 105th Street
Lenexa KS 66215 (USA)

ADOPTED BY THE
MAYOR AND COUNCIL

October 9, 2014

RESOLUTION NO. 22296

RELATING TO INTERGOVERNMENTAL AGREEMENTS; APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT ("IGA") BETWEEN THE CITY OF TUCSON ("CITY") AND PIMA COUNTY FOR THE TRANSFER OF EQUIPMENT AND PROPERTY REGARDING FURTHERANCE OF THE PIMA COUNTY INTEGRATED NETWORK (PCWIN); AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The IGA between the City and Pima County enabling the transfer of equipment and property in furtherance of PCWIN, attached as Exhibit A, is approved.

SECTION 2. The Mayor or his designee is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to any and all other documents necessary to effectuate the IGA by the City of Tucson.

SECTION 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.

SECTION 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this Resolution become immediately effective, an emergency is hereby declared to exist and this Resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, October 9, 2014.



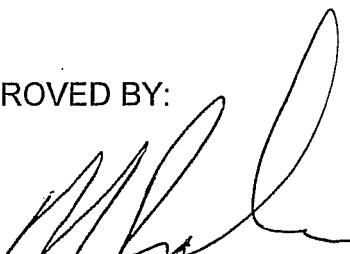
MAYOR

ATTEST:



CITY CLERK

APPROVED BY:



CITY ATTORNEY

DLD/mg
9/4/14

REVIEWED BY:



CITY MANAGER