

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF PHOENIX
AND
THE CITY OF PEORIA
FOR USE OF FIRE APPARATUS**

Phoenix Contract No. _____
Peoria Contract No. _____

This Intergovernmental Agreement (“Agreement”) is entered into this ____ day of _____, 2024 (Effective Date), by and between the City of Phoenix, for and on behalf of the Phoenix Fire Department (“the City”), and the City of Peoria, for and on behalf of the Peoria Fire-Medical Department (“the Agency”). Throughout this Agreement, the City and the Agency individually may be referred to as “Party” and may be referred to collectively as “Parties” to this Agreement.

RECITALS

WHEREAS, the City Manager of Phoenix, is authorized and empowered by provisions of the City Charter to execute contracts; and,

WHEREAS, the City is authorized and empowered to enter into agreements pursuant to Chapter 2, Section 2 (i), of the Charter of the City of Phoenix; and,

WHEREAS, the City and the Agency are authorized and empowered to enter into intergovernmental agreements for the provision of services or for joint or cooperative action pursuant to Arizona Revised Statutes (A.R.S.) §11-952; and,

WHEREAS, agreements for intergovernmental cooperation in public safety areas, including operations and management of fire and police, or the public safety related agencies have existed between municipalities and governmental jurisdictions; and,

WHEREAS, the City of Phoenix is the owner of various fire apparatus; and,

WHEREAS, the Agency desires the use of such fire apparatus; and,

WHEREAS, Ordinance No. S-51045 dated June 12, 2024 authorized the City to enter into an agreement with Peoria Fire-Medical Department for the use of fire apparatus from the Phoenix Fire Department.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, inducements, covenants, agreements, conditions and other good and valuable consideration, the receipt and sufficiency which is acknowledged, the Parties agree as follows:

ARTICLE I. PURPOSE

The Phoenix Fire Department would like the ability to allow partner agencies the use of various fire apparatus on an as-needed basis to benefit public safety as long as such use is not detrimental to operations at the Phoenix Fire Department.

ARTICLE II. STATEMENT OF SERVICES

1. City hereby agrees to lend to Agency and Agency hereby agrees to borrow from City, the following described fire apparatus ("Loaned Equipment") AS IS:
 - Engine(pumper)
 - Ladder
 - Ambulance
 - other emergency response vehicle
2. Loaned Equipment Pickup. After the commencement of the Term, when a loan of Equipment has been arranged, Agency shall be responsible for picking up the Loaned Equipment from the City's Fire Resource Center, located at 2625 S. 19th Avenue, Phoenix, Arizona 85009 and filling out the Phoenix Fire Department Vehicle Use Form "Exhibit A" attached.
3. Use. Agency shall use the Loaned Equipment in a careful and proper manner and solely for the purpose of fire prevention and firefighting. Agency further shall comply with and conform to all national, state, municipal, police and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Loaned Equipment.
4. Right to Lend Equipment. City warrants to Agency that City has been authorized by its governing body to lend the Loaned Equipment to the Agency as provided in this Agreement and Agency warrants to City that Agency has been authorized by its governing body to borrow the Loaned Equipment from City as provided in this Agreement.
5. Ownership. Title to the Loaned Equipment and ownership thereof shall at all times be registered in the name of City and Agency shall have no right to use the Loaned Equipment, except as set forth in this Agreement.

6. Repairs. Agency, at its sole cost and expense, shall keep the Loaned Equipment in good repair, condition and working order, and shall replace any and all parts, mechanisms and devices required to keep the Loaned Equipment in good mechanical working order, including completing any repairs or maintenance required under and in accordance with the City's specifications.
7. Operating Costs. Agency shall pay all operating costs whatsoever of the Loaned Equipment, including without limiting the generality of the foregoing, the cost of fuel, oil, licenses, license registration fees, municipal licenses and inspection fees (if applicable).
8. Inspection and Certification. City shall have the right to inspect the Loaned Equipment, without prior notice at all reasonable times during the Term. Agency further agrees to comply with the inspection and certification per the City's requirements and have the Loaned Equipment inspected per the City's requirements at such location as City shall designate.
9. Alteration. Agency shall not alter, add, or allow any other party to alter or add to the Loaned Equipment in any way without the prior written approval of City. Any approved alterations or additions to the Loaned Equipment shall become and remain the property of the City.
10. Loss and Damage. Agency hereby assumes and shall bear the entire risk of loss and damage to the Loaned Equipment from any and every cause whatsoever. No loss or damage to the Loaned Equipment or any part thereof shall impair any obligation of Agency under this Agreement which shall continue in full force and effect through the Term.
11. In the event of loss or damage of any kind whatever to the Loaned Equipment, Agency shall, at City's option:
 - (i) replace the same in good repair, condition and working order;
 - (ii) replace the same with like equipment in good repair, condition and working order; or
 - (iii) pay to City the replacement cost of the Loaned Equipment.
12. Surrender. Upon the expiration of the Term or earlier termination of this Agreement, Agency shall return the Loaned Equipment to City in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, by delivering the Loaned Equipment at Agency's cost and expense to such place as City shall specify within the City of Phoenix, Arizona.
13. Taxes. Agency shall keep the Loaned Equipment free and clear of all levies, liens and encumbrances. Agency, or City at Agency's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, use and property taxes, gross receipts, taxes arising out of receipts from use or operation

of the Loaned Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing, together with any penalties or interest thereon, imposed by any state, federal or local government or any agency, or department thereof, upon the Loaned Equipment or the purchase, use, operation or leasing of the Loaned Equipment or otherwise in any manner with respect thereto and whether or not the same shall be assessed against or in the name of City or Agency. However, Agency shall not be required to pay or discharge any such tax or assessment so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of City to the Loaned Equipment; provided, Agency shall reimburse City for any damages or expenses resulting from such failure to pay or discharge.

14. Warranty. Agency acknowledges and agrees that City makes no warranties, either express or implied, as to any matter whatsoever, including without limiting the generality of the foregoing, the condition of the Loaned Equipment, its merchantability, or its fitness for any particular purpose.
15. No Liability. Agency acknowledges and agrees that City shall not have any liability for any damages, liabilities or obligations that arise (whether directly or indirectly) as a result of this Agreement or Agency's possession, use, operation or return of the Loaned Equipment. This provision shall survive termination or expiration of this Agreement.
16. Default. If Agency fails to pay any amount herein provided within ten (10) days after the same is due and payable, or if the Agency fails to observe, keep or perform any other provision of this Agreement required to be observed, kept or performed by the Agency, the City shall have the right to exercise any one or more of the following remedies:
 - (i) To declare the entire amount of payment hereunder immediately due and payable without notice or demand to Agency.
 - (ii) To sue for and recover all payments, then accrued or thereafter accruing.
 - (iii) To take possession of the Loaned Equipment, without demand or notice, wherever same may be located, without any court order or other process of law. Agency hereby waives any and all damages occasioned by such taking of possession.
 - (iv) To terminate this Agreement.
 - (v) To pursue any other remedy at law or in equity.
17. Notwithstanding any repossession or any other action which City may take, Agency shall be and remain liable for the full performance of all obligations on the part of Agency to be performed under this Agreement. All of City's remedies are cumulative and may be exercised concurrently or separately.

ARTICLE III. TERM OF THE AGREEMENT

1. Term:

This Agreement shall commence on the Effective Date referenced above and shall continue in force for five (5) years or until terminated by formal act of the Parties.

2. Termination and Cancellation:

Either Party at their convenience, by written notice, may terminate this Agreement in whole or in part by providing thirty days (30) written notice to the other Party. If this Agreement is terminated, the Agency, will be liable under the provisions of this contract for services and material rendered and accepted. In addition, the Parties acknowledge that this Agreement is subject to the cancellation by either party pursuant to the provisions of A.R.S. § 38-511. Upon cancellation or termination of this Agreement, each party will retain ownership of their solely provided property for the purposes of disposing of property on termination.

Further, the parties agree that City shall have the right to terminate this Agreement upon five (5) days prior written notice, if City's Fire Chief shall determine in his sole discretion that City has a need for the Loaned Equipment. Within five (5) calendar days of Agency's receipt of such a notice, Agency shall return the Loaned Equipment to City at the City's Fire Resource Center, located at 2625 S. 19th Avenue, Phoenix, Arizona 85009.

ARTICLE IV. GENERAL TERMS AND CONDITIONS

1. Governing Law; Forum; Venue:

This Agreement is executed and delivered in the State of Arizona, and the substantive laws of the State of Arizona (without reference to choice of law principles) will govern its interpretation and enforcement. Any action brought to interpret or enforce any provision of this Agreement that cannot be administratively resolved, or otherwise related to or arising from this Agreement, will be commenced and maintained in the state or federal courts in the State of Arizona, Maricopa County, and each of the Parties, to the extent permitted by law, consents to jurisdiction and venue in such courts for such purposes.

2. Implied Terms:

Each and every provision of law and any clause required by law to be in this Agreement shall be read and enforced as though it were included herein, and, if through mistake or otherwise, any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement shall be amended to make such insertion or correction.

3. Entire Agreement; No Waiver; Amendment:

This Agreement is intended by the undersigned Parties as the final expression of their agreement and is intended to be the complete and exclusive statement of the

terms of the agreement between the Parties. No course of prior dealings between the Parties and no usage in the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing Party has knowledge of the nature of the performance and the opportunity to object. Any delay or failure to exercise or enforce any right, power, privilege, or remedy under this Agreement by a Party may not be deemed a waiver, release, or modification of the requirements of this Agreement or any of its terms or provisions by that Party. This Agreement may not be modified or amended except in a writing signed by both Parties.

4. Third-Party Beneficiary Clause:

The Parties expressly agree that this Agreement is neither intended by any of its provisions to create any third-Party beneficiary, nor to authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

5. Fund Appropriation Contingency:

The Parties understand that the continuation of this Agreement is subject to the budget of the Parties providing for the associated expenditures. The Parties cannot assure that the funding for this Agreement will be approved in the future. In such event, either Party may terminate this Agreement.

6. No Joint Venture:

No term or provision in this Agreement is intended to create a partnership, joint venture or agency arrangement between any of the Parties.

7. Assignment and Delegation:

Neither this Agreement, nor any of its rights or obligations, may be transferred or assigned by either Party without the prior written consent of both Parties. Any attempt to assign this Agreement without prior written consent will be void and may result in penalties up to and including termination of the Agreement.

8. Independent Contractor Status:

To the extent required by law, the Parties agree that neither Party shall be deemed to be an employee or agent of the other Party to this Agreement and that the relationship created by this Agreement is that of independent contractors. To the extent applicable by law, neither Agency nor any of Agency's agents, employees or helpers will be deemed to be the employee, agent, or servant of the City.

9. Workers' Compensation:

Pursuant to A.R.S. § 23-1022(D), for the purposes of workers' compensation coverage, all employees of each Party covered by this Agreement shall be deemed to be an employee of all Parties. The entity which regularly employs an employee

entitled to workers' compensation arising out of work associated with this Agreement shall be the entity solely liable for payment of all workers' compensation and related benefits.

10. Severability:

The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which shall remain in effect without the invalid provision or application.

11. Compliance with Laws:

The Parties will comply with all existing and subsequently enacted federal, state and local laws, ordinances, codes, and regulations that are, or become applicable to this Agreement. If a subsequently enacted law imposes substantial additional costs, a request for an amendment may be submitted pursuant to this Agreement.

12. Drug Free Workplace:

The Parties will comply with the Drug Free Workplace Act of 1988 and will permit inspection of its personnel records to verify such compliance. A Party's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement.

13. Immigration Requirements:

To the extent applicable by law, the Parties will comply with the Immigration Reform and Control Act of 1986 ("IRCA") and will permit inspection of its personnel records to verify such compliance. To the extent applicable under A.R.S. § 41-4401, each Party warrants compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Each Party has the right to inspect the papers of the other Parties participating in this Agreement to ensure compliance with this paragraph. A Party's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement.

14. Legal Worker Requirements:

To the extent applicable by law, the Agency is prohibited by Arizona Revised Statutes § 41-4401 from awarding an agreement to any organization who fails, or whose subcontractors fail, to comply with Arizona Revised Statutes § 23-214(A). Therefore, the City shall ensure that:

14.1 To the extent applicable by law, each subcontractor the City uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with Arizona Revised Statutes § 23-214,

14.2 To the extent applicable by law, a breach of warranty will be deemed a material breach of the Agreement and is subject to termination of the Agreement by the Agency.

14.3 To the extent applicable by law, the Agency will have the legal right to inspect the papers of the City and any contractor or subcontractor who work(s) on this Agreement to ensure that the contractor or subcontractor is complying with this Section.

15. Disposition of Property:

Upon cancellation or termination of this Agreement, each party will retain ownership of their solely provided property for the purposes of disposing of property on termination.

ARTICLE V. PAYMENTS

1. Payment and Fees:

Agency's Payment. If Agency fails to procure or maintain said insurance or to pay fees, assessments, charges and taxes, all as specified in this Agreement, City shall have the right, but shall not be obligated, to affect such insurance, or pay said fees, assignments, charges and taxes, as the case may be. In that event, the cost thereof shall be repayable to City upon demand, and failure to repay the same shall carry with it the consequence of interest at ten percent (10%) per annum.

2. Invoicing:

Agency shall remit all payments to the City of Phoenix Fire Department within thirty (30) calendar days of the invoice date (the "Due Date"). If Agency's payment is not received with five (5) days after the Due Date, Phoenix may exercise its right to terminate this Agreement.

ARTICLE VI. INSURANCE AND INDEMNIFICATION

1. Indemnification:

In consideration of the benefits afforded by this Agreement, the requesting Department or Entity agrees to defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors ("Indemnitor's Agents") arising out of or in connection with this Agreement. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses arising out of or recovered under any state's Workers'

Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the benefits afforded by this Agreement, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Agreement.

2. Agency's Insurance:

Agency must procure insurance against claims that may arise from or relate to the Loaned Equipment and must maintain that insurance until the termination of this Agreement.

Scope and Limits of Insurance: Agency must provide coverage with limits of liability not less than those stated below.

3. Automobile Liability:

Bodily Injury and Property Damage for the Loaned Equipment used in connection with this Agreement: Combined Single Limit (CSL) \$2,000,000

This insurance requirement is a minimum requirement for this Agreement and in no way limits the indemnity covenants contained herein. City does not in any manner warrant that the minimum limits contained in this Section are sufficient to protect the Agency from liabilities that might arise under this Agreement and Agency is free to purchase such additional insurance as Agency may determine to be necessary.

ARTICLE VII. NOTICES

1. Any notice, consent, or other communication ("notice") required or permitted under this Agreement must be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If to City:	If to Agency :
Phoenix Fire Department 150 S. 12 th Street Phoenix, AZ 85034 Attn: Michael J. Duran Phoenix Fire Chief Telephone: (602) 256-3189 Fax: (602) 262-4429	Peoria Fire-Medical Department 8351 W. Cinnabar Avenue Peoria, AZ 85345 Attn: Gary Bernard Peoria Fire Chief Telephone: (623) 773-7279 Fax: (623)

Notice will be deemed received at the time it is personally served or, on the day it is sent by facsimile transmission or, upon deposit with any commercial air courier or express service or, if mailed, ten (10) days after the notice is deposited in the United States mail as provided above. Either Party may change its mailing address, fax number, or the contact information for the person to receive notice by notifying the other Party as provided herein. Notice sent by facsimile transmission must also be sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement is executed as provided below. Further, in signing this Agreement, the signatories below affirm and attest that they are authorized to execute this Agreement on behalf of their respective Party.

CITY OF PHOENIX, a municipal corporation

Jeffrey Barton, City Manager

By: _____

Michael J. Duran

Fire Chief

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant Chief Counsel

CITY OF PEORIA, a municipal corporation

Henry Darwin, City Manager

By: _____

Gary Bernard

Fire Chief

ATTEST:

City Clerk, Peoria

APPROVED AS TO FORM:

City Attorney, Peoria

In accordance with A.R.S. §11-952 (D), this Agreement has been reviewed by each of the undersigned attorneys who have determined that, as to their respective clients only, it is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

CITY OF PHOENIX

By: _____
David Lavelle
Assistant Chief Counsel

Date: _____

CITY OF PEORIA, a municipal corporation

By: _____
City Attorney, Peoria

Date: _____

EXHIBIT A
PHOENIX FIRE DEPARTMENT
VEHICLE USE FORM


PHOENIX FIRE
DEPARTMENT VEHICLE USE
FORM

Date: _____

Requestor Information			
Requesting Department:			
Name:		Phone:	
Title/Rank:		Email:	
Loan Detail			
Reason for Loan:			
Vehicle Type:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vehicle Count:			
Vehicle Issue Date:		Vehicle Return Date:	
Usage Start Date:		Usage End Date:	
Vehicle Use Form			
<p>Purpose: This vehicle use agreement allows partner agencies the use of various Phoenix fire apparatus on an as-needed basis as long as such use is not detrimental to operations at the Phoenix Fire Department.</p> <p>I confirm that I have requested and am taking possession of the vehicles noted above and further detailed below. I have confirmed that the vehicles are in good working order and without obvious defects _____ (initial).</p> <p>I understand that under the terms of this loan agreement my Department, City and I am responsible for the care and security of loaned vehicles. I understand that any vehicle that is lost, stolen, or damaged is the responsibility of my Department or City to repair or replace. I understand that the Phoenix Fire Department reserves the right to request that loaned vehicles be returned before the return date listed, if necessary.</p> <p>Indemnification: In consideration of the benefits afforded by this Agreement, the requesting Department or Entity agrees to defend, indemnify, and hold harmless the City of Phoenix and its officers, officials (elected or appointed), agents, and employees ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever ("Losses") caused, or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees or subcontractors ("Indemnitor's Agents") arising out of or in connection with this Agreement. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses arising out of or recovered under any state's Workers' Compensation Law or arising out of the failure of Indemnitor or Indemnitor's Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor's duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor's duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely a result of Indemnitee's own negligent or willful acts or omissions. Indemnitor will be responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the benefits afforded by this Agreement, Indemnitor waives all rights of subrogation against Indemnitee for losses arising from the work performed by Indemnitor or Indemnitor's Agents for the City of Phoenix. The obligations of Indemnitor under this provision survive the termination or expiration of this Agreement.</p>			

