

**ORDINANCE No. 2013-150  
CITY OF SHOREACRES, TEXAS**

AN ORDINANCE APPROVING AND AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF SHOREACRES AND THE CITY OF HOUSTON TO PROVIDE ACCESS TO, AND USE OF, THE CITY OF HOUSTON PUBLIC SAFETY RADIO SYSTEM BY THE CITY OF SHOREACRES; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; FINDING COMPLIANCE WITH THE OPEN MEETINGS LAW; AND PROVIDING AN EFFECTIVE DATE HEREOF.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SHOREACRES:

That if any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance; and,

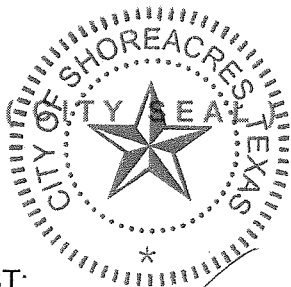
Section 1. The City Council hereby approves and authorizes the contract, agreement, or other undertaking described in the title of this ordinance, a copy of which is on file in the office of the City Secretary. The Mayor is hereby authorized to execute all related documents on behalf of the City of Shoreacres to confirm acceptance by the City of Shoreacres. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 2. The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

Section 3. This Ordinance shall be effective from and after its passage and approval, and it is so ordered.

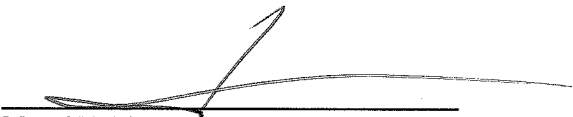
The City Council officially finds, determines, recites, and declares that a sufficient written notice of the date, hour, place and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings Law, Chapter 551, Texas Government Code; and that this meeting has been open to the public as required by law at all times during which this ordinance and the subject matter thereof has been discussed, considered and formally acted upon. The City Council further ratifies, approves and confirms such written notice and the contents and posting thereof.

PASSED AND APPROVED this the 28th day of October 2013.



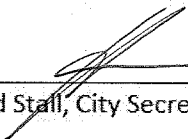
ATTEST:

David K. Stall, CFM  
City Secretary

  
Matt Webber, Mayor

M/2		Yea	Nay	N/V	Absent
	M. Webber	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	B. Bunker	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	S. Jones	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
M	R. Moses	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	N. Schnell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Z	M. Wheeler	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Passed / Failed

 10.29.13  
David Stall, City Secretary - Date

**INTERLOCAL AGREEMENT  
FOR USE OF CITY OF HOUSTON PUBLIC SAFETY RADIO SYSTEM**

**THE STATE OF TEXAS**

**COUNTY OF HARRIS**

This Agreement is made pursuant to Chapter 791 of the Texas Government Code and entered into by and between the City of Houston, a home rule city of the State of Texas (the "City") acting by and through its governing body, the City Council of Houston, and the City of Shoreacres, Texas (the "User") acting by and through its governing body, the Shoreacres City Council.

**RECITALS**

The City of Houston owns a public safety trunked radio system that is licensed by the Federal Communications Commission (the "FCC"), which permits radio communications and transmissions via radio units, and

The User desires to obtain access to the City's communication system in order to communicate among various public safety units.

**NOW, THEREFORE**, the parties, in consideration of the mutual covenants and agreements herein contained, do mutually agree as follows:

**I. DEFINITIONS**

For purposes of this agreement, the following definitions apply:

- a. **Primary Dispatch System**: A communications system upon which the User, its agents, employees or assigns rely primarily when it desires or attempts the engagement of radio communications or radio transmissions of energy among its Radio Units;
- b. **Priority Access**: An assigned level of system access that determines the choice of access to the Radio System between two or more Radio Units seeking use simultaneously;
- c. **SmartZone Radio System**: Trunked Radio System in and about The City of Houston operating under a single centralized controller as a radio system and managed by the City of Houston Information Technology Department;
- d. **Public Safety Radio System**: The SmartZone Radio System and all of its components;
- e. **Radio Unit**: Mobile, stationary, or portable voice radio communications units communicating among other radio communications units at certain air wave frequencies; and

- f. **System Code Identification Number:** An identification number that allows Radio Units to gain access to the Radio System to enable the Radio Units to communicate among other Radio Units at certain airwave frequencies, providing a Primary Dispatch System for a User's Radio Units.

## II. DUTIES OF THE CITY

The City agrees that during the term of this Agreement, it will:

- a. Allow the User to have access to its Radio System to engage in radio communications among its Radio Units as a Primary Dispatch System;
- b. Provide the User with a Systems Code Identification Number for all Radio Units;
- c. Upon being notified that one or more of the User's Radio Units have been lost or stolen, attempt to disable the lost or stolen Radio Units;
- d. Provide the same level of Priority Access to the Radio System for the User as that afforded the City.
- e. It is expressly understood and agreed that one hundred percent (100%) coverage of any area at all times is improbable. There may be adverse transmission conditions such as short-term unpredictable meteorological effects and sky-wave interference from distant stations that can interrupt the Radio System. Likewise, there are other causes beyond reasonable control of City, including, but not limited to, motor ignition and other electrical noise that may be minimized by corrective devices at User's expense. Any surveys, studies, research, or other measures taken to ensure the adequacy of coverage provided to User under this Agreement are the sole responsibility and expense of User.

## III. DUTIES OF USER

During the term of this Agreement, the User agrees to:

- a. Assume all costs or responsibility for providing the Radio Units that will have access to the City's Radio System;
- b. Give the City at least ten (10) days prior written notice of its intent to increase, decrease, or otherwise change the number of Radio Units that have access to the City's Radio System;
- c. Notify the City, in accordance with Section VII, if one or more of its Radio Units have been lost or stolen within twenty-four (24) hours of determining that the Radio Units have been lost or stolen;
- d. Use the System Code Identification Number described in this Agreement to access the City's Radio System as a Primary Dispatch System; and

- e. Observe and abide by all applicable statutes, laws, rules and regulations, including, but not limited to, those of the FCC. In addition, the User agrees to observe and abide by any applicable administrative rules promulgated by the City from and after the date such rules become effective and have been delivered to User. Further, the User acknowledges that should any of these statutes, rules, regulations or administrative rules change during the term of this Agreement and if the change necessitates a modification of the Agreement, the modification may be effectuated by the City without incurring any liability for this modification. Should the City notify the User of any such change, the User shall have thirty (30) days to review and agree to any proposed changes made to this Agreement. If assent to the change is not given, this Agreement terminates.

#### **IV. PAYMENTS BY USER**

The User shall pay the City for access to the Radio System at the rate specified in the Fee Schedule attached hereto as Exhibit A. The User expressly shall prepay yearly charges in full at the beginning of each Annual Term of this Agreement, based upon the number of the Radio Units then in service. During such term, the following provisions apply:

- a. In the event the number of Radio Units in service increases during an Annual Term of this Agreement, the charge for each additional Radio Unit is based upon the remaining annual charge multiplied by the fractional part of the current one-year term of this Agreement. The User agrees to prepay the City the entire amount owed for additional Radio Units for the time remaining in the then current term at least ten (10) days before the User obtains access to the Radio System with the additional Radio Units.
- b. In the event the number of Radio Units in service decreases during an Annual Term of this Agreement, the City agrees to either allow a credit or make a refund to the User of a fractional part of the current one-year term remaining under this Agreement. The City agrees to effectuate said credit/refund within thirty (30) days of the date the User gives the City written notice of its decrease in the number of Radio Units it has in service.
- c. The User shall pay the City for the programming of the User's radios for use on the Radio System at a rate specified in the Fee Schedule, attached hereto and incorporated herein, upon initial access to the Radio System. Should the User's Radio Units require maintenance that destroys the original programming referred to above, after such maintenance each radio will be reprogrammed by the City to the standard configuration at the rate specified in the attached Fee Schedule. In any instance in which the City performs Radio Unit programming services, the User agrees to pay the City the entire amount owed for the re-programming of Radio Units within thirty (30) days of the invoice date of such services.

- d. The City may increase the fees provided in this Agreement by giving the User written notice of its intention to increase fees at least ninety (90) days before the effective date of the proposed increase. Should such increase become effective during an Annual Term of this Agreement, the increase will be prorated based upon the number of months remaining in the then current term of this Agreement. In the event of such mid-term fee increase, the User agrees to pay the City the total, prorated fee increase on or before thirty (30) days after the effective date of the fee increase. The User agrees to pay the City the entire amount owed from the fee increase within thirty (30) days of receiving notice. Notice may be in the form of an invoice.
- e. The User will pay its obligations hereunder from available current revenues.

## **V. RADIO EQUIPMENT INSTALLATION AND RADIO SERVICES**

To the extent resources are available and solely at its discretion, City may provide radio equipment installation and radio services upon request of the User. If these services are provided, the User agrees to pay the City on a Time and Material basis at the rate specified in the Fee Schedule attached hereto and incorporated herein. The City agrees to invoice the User after the services are rendered, and the User agrees to pay invoices within thirty (30) days of the invoice date. Solely at the discretion of the City, the User may purchase certain additional parts and/or accessories from the City at a price set by the City. The City agrees to invoice the User after the parts and/or accessories are supplied to the User. The User agrees to pay the invoice within thirty (30) days of the invoice's date.

**IT IS EXPRESSLY UNDERSTOOD THAT THE CITY NEITHER WARRANTS NOR ASSUMES ANY RESPONSIBILITY FOR INSTALLATION OR USE OF EQUIPMENT OR FOR THE RELIABILITY OR ADEQUACY OF SERVICES PROVIDED HEREUNDER. FURTHER, BY REQUESTING THAT THE CITY PROVIDE THESE SERVICES, THE USER ASSUMES THE TOTAL RISK OF ANY LOSS ASSOCIATED WITH THE INSTALLATION OF THE RADIO EQUIPMENT; ANY LOSS RESULTING FROM THE USE OF THE RADIO EQUIPMENT SO INSTALLED; AND ANY LOSS RESULTING FROM THE USE OF THE RADIO EQUIPMENT TO WHICH OTHER RADIO SERVICES HAVE BEEN PROVIDED BY THE CITY.**

## **VI. TERM AND TERMINATION**

The term of this Agreement is one year ("Annual Term") and shall commence on the Countersignature Date. Thereafter, this Agreement will automatically renew for 30 successive one-year terms unless it is terminated by either party by giving the other party prior written notice of its intention to terminate not less than sixty (60) days prior to the expiration of the then current Annual Term of this Agreement. Notwithstanding the preceding, this Agreement terminates:

- a. Immediately if all or substantially all of the authorization held by the City or the User is revoked by the FCC or its successor agency; or

- b. Upon either party giving the other party thirty (30) days prior written notice of its intention to terminate. Should the User terminate this Agreement as provided in this paragraph, the User agrees that payment in full of all obligations owed to the City by the User is a condition precedent to termination. Should either party terminate this Agreement, the User is entitled to a refund of the pro rata share of any prepayment.
- c. If the User fails to make any payment of any sum due under this Agreement and such failure continues for forty-five (45) days after the City has given the User written notice of such failure, then the User is in default under this Agreement. In the event of the User's default, the City has the right to terminate this Agreement, deny the User any service provided by the City under this Agreement, and retain all moneys paid to the City pursuant to the terms and conditions of this Agreement as liquidated damages.
- d. Each and every right and remedy of the City and User are cumulative to and not in lieu of each and every other such right and remedy afforded by law and equity.
- e. Should the City fail to perform as provided under the terms of this Agreement, the User's sole remedy is termination of this Agreement, and the City agrees to make a refund to the User of the portion of the pre-paid fee based upon that fractional part of the one-year term remaining under the Agreement.

## VII. NOTICES

All notices to either Party to this Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address given for notices or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

FOR THE CITY: All notices and communications must be mailed as follows:

If to City, to the following address:

with duplicate Copy to:

Tom Sorley, Deputy Director  
Radio Communications Services  
611 Walker Street, Ste. 901  
Houston, Texas 77002

City of Houston  
Director, Information Technology  
611 Walker Street 9th Floor  
Houston, Texas 77002

FOR THE USER:

If to User, to the following address:

with duplicate Copy to:

City of Shoreacres  
David K. Stall, City Secretary  
601 Shore Acres Blvd  
Shoreacres, TX 77571

Shoreacres Police Department  
Chief of Police  
601 Shore Acres Blvd  
Shoreacres, TX 77571

These addresses may be changed upon giving prior written notice to the other party. All mailed notices and communications are deemed given and complete upon mailing as provided above.

#### **VIII. ASSIGNMENT; PARTIES BENEFITED**

Neither party hereto shall sell, assign, or transfer any of its rights or obligations under this Agreement in whole or in part, without the prior written consent of the other party. This Agreement shall bind and benefit the City and the User and shall not bestow any rights upon any third party.

#### **IX. GOVERNING LAW AND REVENUE**

This Agreement is governed by and construed according to the laws of the State of Texas. Exclusive venue of any action or claim arising out of this Agreement is Harris County, Texas. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon the default or failure by an appropriate remedy, shall not be considered a waiver of strict compliance with any other obligation hereunder, and shall not be considered a waiver of any rights or remedies occurring as a result of any future development or failure of performance.

#### **X. ENTIRE AGREEMENT**

This instrument contains the entire Agreement between the parties relating to the rights granted and obligation assumed. Any modifications concerning this Agreement are of no force and effect unless in writing and executed by both parties except for those modifications effectuated pursuant to the provisions of Paragraph III (e).

This Agreement may be executed in multiple counterparts, each having equal force and effect of an original. This Agreement shall become binding and effective only after it has been authorized and approved by the governing bodies of each governmental entity, as evidenced by the signature of the appropriate authority.

#### **XI. FORCE MAJEURE**

Neither Party shall be liable for any default or delay in the performance of its obligations under this Agreement if, while and to the extent such default or delay is caused by acts of God, unusual weather conditions, fire, riots, sabotage, acts



of domestic or foreign terrorism, or any other cause beyond the reasonable control of such Party ("Force Majeure"). Force Majeure does not include economic or market conditions, which affect a Party's cost, but not its ability to perform. The party invoking Force Majeure shall give prompt, timely and adequate notice to the other Party, by facsimile transmission or telephone confirmed promptly thereafter in writing, and shall use due diligence to remedy the event of Force Majeure, as soon as reasonably possible. In the event of default or delay in Agreement performance due to any of the foregoing causes, then the time for completion of the services will be extended by a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

## **XII. LIAISONS**

The Police Chief of User and the Director of Information Technology of Houston will designate a Project Liaison for each Party from time to time. The initial Liaisons are as follows:

For Houston: Tom Sorley

For User: David K. Stall

## **XIII. COMPLIANCE WITH OTHER LAWS**

The Parties shall observe and comply with all federal, state, and local laws, rules, ordinances, and regulations in any manner affecting the conduct of the services herein provided and performance of all obligations undertaken by this Agreement.

## **XIV. SEVERABILITY**

In the event that one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of this Agreement shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein, but shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

## **XV. LIABILITY OF PARTIES**

The Parties agree and acknowledge that no entity is an agent of the other entity and that each entity is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the utilization of City's SPA and the Communication Equipment License except as hereinafter provided. The Parties agree that no City funds, equipment or personnel will be utilized in the acquisition of goods or services for the User pursuant to this Agreement.

**Nothing in this Agreement may be construed as creating any personal liability on the part of any officer, director, employee or agent of any public body that may be a Party to this Agreement and the Parties expressly agree**

**that the execution of this Agreement does not create any personal liability on the part of any officer, director, employee or agent of City or User. The Parties shall be responsible for their own acts of negligence.**

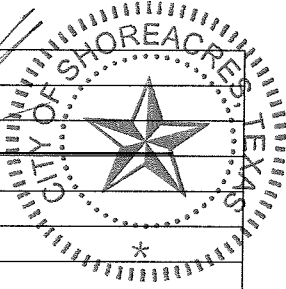
Where any injury or property damage results from the joint or concurring negligence of the Parties, liability, if any, shall be shared by each Party on the basis of comparative responsibility in accordance with the applicable laws of the State of Texas, subject to all defenses, including governmental immunity.

These provisions are solely for the benefit of the Parties hereto and not for the benefit of any person or entity not a party to this Agreement. No provisions shall be deemed a waiver of any defenses available by law.

**[Intentionally left blank]**

The Parties have executed this Agreement in multiple copies, each of which is an original.

<b>CITY OF SHOREACRES</b>	<b>ATTEST/SEAL</b>
By: _____	By: _____
Name: Matt Webber	Name: David K. Stall
Mayor	City Secretary
<b>CITY OF HOUSTON</b>	<b>ATTEST/SEAL</b>
By: _____	By: _____
Name: Annise Parker	Name: Anna Russell
Mayor	City Secretary
<b>APPROVED:</b>	<b>COUNTERSIGNED BY:</b>
_____	_____
Chief Information Officer	City Controller
<b>APPROVED AS TO FORM:</b>	<b>DATE COUNTERSIGNED:</b>
_____	_____
Assistant City Attorney	
L.D. File No. _____	



## Public Safety Radio System Maintenance Fee Schedule "Exhibit A"

### System Access Fees, Monthly Fees Per Unit

Radio Unit (Voice), per radio Unit	\$15.00
Radio Unit (Voice), Interoperability Only (no assigned talkgroup only)	\$0.00
Patch (Voice) per unit	\$15.00

### Programming Fees, Per Unit

<u>Radio Unit (Voice) Hours Times Hourly Rate</u>	
Portable	.25 hours
Mobile	.25 hours
Template creation/maintenance (labor to build, modify or update)	Per Hour
System Activation	.25 hours
System Deactivation	.25 hours

### Maintenance Fees (if applicable) - Yearly Fees

		<u>Annual</u>	<u>Extended</u>
	<u>Qty</u>	<u>Price</u>	<u>Annual Price</u>
<u>Software Subscription Agreement (Motorola SSA only)</u>			
Dispatch Console Operator Position	0	\$ 525.00	\$ -
Dispatch Console Site	0	\$ 787.50	\$ -
 <u>Pretested Software Subscription (PTSS from Motorola)</u>			
Dispatch Console Site	0	\$ 3,569.96	\$ -
 <u>Technical Support (Motorola HiTech)</u>			
Dispatch Console Site	0	\$ 825.30	\$ -
Dispatch Console Operator Position			
 <u>Infrastructure Repair (Motorola Depot Repair)</u>			
Dispatch Console Site	0	\$ 813.00	\$ -
Dispatch Console Operator Position	0	\$ 105.84	\$ -
 <u>T-1 Fees (actual fee from provider per T1 line)</u>			
Leased T-1 Line, circuit #	0	\$ 3,780.00	\$ -

### Service Fees

Hourly Labor Rate	\$72.00
Travel/Service Call (actual travel time based per hour rate)	\$72.00

### Additional Service Fees (not listed in ILA)

		<u>Annual</u>	<u>Extended</u>
	<u>Qty</u>	<u>Price</u>	<u>Annual Price</u>
Advance System Key (special cases only, cost based per ID)	0	\$ 9.00	\$ -

A 5% administrative fee has been included in Maintenance Fees for pass-through costs that are handled by the City of Houston (except equipment purchases).

A 15% administrative fee has been added for parts, materials and equipment purchased through the City of Houston. Maintenance fees may vary from year to year based on Motorola's fees