

**AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AVONDALE
AND
THE CITY OF LITCHFIELD PARK
FOR
FLEET MAINTENANCE AND REPAIR SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made as of February 15, 2023, between the City of Avondale, an Arizona municipal corporation (“Avondale”) and the City of Litchfield Park, an Arizona municipal corporation (“Litchfield”). Avondale and Litchfield are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The Parties previously entered into an Intergovernmental Agreement, dated June 7, 2021, for Avondale to perform fleet maintenance and repair services on Litchfield-owned City vehicles (the “IGA”).

B. Litchfield desires to have Avondale continue performing fleet preventative maintenance and repair services for Litchfield and Avondale has the experience and skills to continue providing fleet preventative maintenance and repair services to Litchfield.

C. The Parties wish to enter into this Amended and Restated Intergovernmental Agreement for Fleet Maintenance and Repair Services (the “Agreement”) to amend and supersede the terms of the IGA.

D. Avondale and Litchfield are authorized to enter into this Agreement pursuant to ARIZ. REV. STAT. §§ 11-951 and 11-952.

E. Avondale and Litchfield desire to enter into this Agreement with respect to Avondale continuing to provide Litchfield with fleet preventative maintenance and repair services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Term. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until June 30, 2024 (the “Initial Term”), unless terminated as otherwise provided pursuant to the terms and conditions of this Agreement. After the expiration

of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each, a “Renewal Term”) if (i) each Party deems the Agreement to be in the best interests of such Party, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of the Agreement, either Party requests, in writing, to extend the Agreement for an additional one-year term and (iii) each Party approves the additional one-year term in writing (including any cost adjustments approved as part of this Agreement), as evidenced by the signature thereon of each Party’s City Manager, which approval may be withheld by either Party for any reason. Either Party’s failure to seek a renewal of this Agreement shall cause the Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that either Party may, with the agreement of the other Party, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

2. Scope of Work. Avondale shall provide Litchfield with fleet preventative maintenance services and repairs services (collectively, the “Services”), as set forth in the Scope of Work and Fee Schedule attached hereto as Exhibit A and incorporated herein by reference.

3. Compensation. Litchfield shall pay Avondale for any and all preventative maintenance or repair services as rates as set forth in the Fee Schedule in Exhibit A.

4. Payments. Avondale will invoice Litchfield quarterly (July 30, October 30, January 30 and April 30) for the Services performed during the preceding quarter. Payments must be received within 30 days of invoice.

5. Fleet Purchasing Assistance. Avondale will assist Litchfield with purchase of new, or replacement of existing, vehicles at a “consulting” price to be determined by the Parties.

6. Tow Services. Avondale will not provide towing services to Litchfield as part of the Services. If towing is required, Litchfield will be billed at actual costs.

7. Capital and Operating Expenditures; Budget. Nothing in this Agreement shall be construed as committing Avondale to incur capital expenditures for equipment, facilities, or otherwise, or to incur expenses not expressly set forth in this Agreement.

8. Insurance. The Parties agree to secure and maintain insurance coverage for any and all risks that may arise out of the terms, obligations, operations and actions as set forth in this Agreement, including but not limited to public entity insurance. The acquisition of insurance or the maintenance and operation of a self-insurance program may fulfill the insurance requirement.

9. Termination; Cancellation.

9.1 For Convenience. This Agreement may be terminated by either Party with or without cause upon 90 days’ written notice to the other Party.

9.2 Conflict of Interest. This Agreement may be canceled by either Party for conflict of interest pursuant to ARIZ. REV. STAT. § 38-511.

9.3 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. ART. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds or the incurring of expenses by Litchfield or Avondale shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. Each Party shall be the sole judge and authority in determining the availability of funds under this Agreement and each Party shall keep the other Party fully informed as to the availability of funds for the Agreement. The obligation of each Party to make any payment pursuant to this Agreement is a current expense of such Party, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of such Party. If the City Council of either Party fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and each shall be relieved of any subsequent obligation under this Agreement.

10. Miscellaneous.

10.1 Independent Contractor. Avondale acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of Litchfield, except as provided in Section 10.11 below. Avondale, its employees and subcontractors are not entitled to workers' compensation benefits from Litchfield. Litchfield does not have the authority to supervise or control the actual work of Avondale, its employees or subcontractors. Avondale, and not Litchfield, shall determine the time of its performance of the Services provided under this Agreement so long as Avondale meets the requirements set forth herein. Avondale and Litchfield do not intend to nor will they combine business operations under this Agreement.

10.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in Maricopa County, Arizona.

10.3 Laws and Regulations. Both Parties shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Parties are responsible for abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (A) existing and future city and county ordinances and regulations, (B) existing and future state and federal laws and (C) existing and future Occupational Safety and Health Administration standards.

10.4 Amendments. This Agreement may be modified only by a written amendment approved by the Parties' respective City Councils and signed by persons duly authorized to enter into contracts on behalf of Avondale and Litchfield. Any attempt at oral modification of this Agreement shall be void and of no effect.

10.5 Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will 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, this Agreement will promptly be physically amended to make such insertion or correction.

10.6 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the Party drafting the Agreement. The Parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

10.7 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by Avondale of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of Avondale to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or Avondale's acceptance of and payment for Services, shall not release Litchfield from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of Avondale to insist upon the strict performance of this Agreement.

10.8 Attorneys' Fees. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing Party shall be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

10.9 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Avondale:	City of Avondale 11465 West Civic Center Drive Avondale, Arizona 85323 Attn: Ron Corbin, City Manager
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With copy to:	City of Avondale 11465 West Civic Center Drive
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Avondale, Arizona 85323
Attn: Nicholle Harris, City Attorney

If to Litchfield:

City of Litchfield Park
214 West Wigwam Boulevard
Litchfield Park, AZ 85340
Attn: Matthew Williams, City Manager

With copy to:

GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Joseph D. Estes, Esq.

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the Party giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

10.10 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

10.11 Worker's Compensation. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of ARIZ. REV. STAT. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue. Each Party shall post a notice pursuant to the provisions of ARIZ. REV. STAT. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

10.12 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

10.13 Captions. Captions and section headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant to construing this Agreement.

11. E-verify, Records and Audits. To the extent applicable under ARIZ. REV. STAT. § 41-4401, The Parties warrant compliance with all federal immigration laws and regulations that relate to its employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A).

12. Israel. The Parties certify that neither is current engaged in and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in Ariz. Rev. Stat. § 35-393, of Israel.

13. Indemnification. Each Party shall indemnify, defend and hold harmless the other Party and each council member, officer, employee or agent thereof (the Party being indemnified and any such person referred to herein as an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the other Party, its officers, employees, agents or any tier of subcontractor in the performance of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of the set forth above.

“Avondale”

CITY OF AVONDALE, an Arizona
municipal corporation

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

Nicholle Harris
Avondale City Attorney

“Litchfield”

CITY OF LITCHFIELD PARK, an Arizona
municipal corporation

Thomas L. Schoaf, Mayor

ATTEST:

Terri Roth, City Clerk

Joseph D. Estes
Gust Rosenfeld, PLC, City Attorney

In accordance with the requirements of ARIZ. REV. STAT. § 11-952(D), the undersigned City Attorneys acknowledge that (i) they have reviewed the above agreement on behalf of their respective clients and (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

EXHIBIT A
TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
CITY OF LITCHFIELD PARK
FOR
FLEET MAINTENANCE AND REPAIR SERVICES

[Scope of Work and Fee Schedule]

See following pages.

Scope of Work and Fee Schedule

Fleet Preventative Maintenance and Repair Services

1. Types of Service: Avondale will provide preventative maintenance and repair services to Litchfield-owned fleet vehicles with the same standard of care that Avondale provides to its own vehicle fleet.

Avondale shall not be the exclusive preventative maintenance and repair services provider for Litchfield, except for police service vehicles, which shall be maintained and repaired by Avondale in the same manner that Avondale services its own police vehicles. Except for the police service vehicles, Litchfield may seek preventative maintenance or repair services from any other provider.

2. Preventative maintenance service on each vehicle includes a multi-point inspection per manufacturer's recommendation, check and top off all fluids, change engine oil, change engine oil filter, clean engine air filter or replace if needed, replace cabin air filter if needed, lubricate all points, rotate tires, inspect brake system, inspect wiper blades and replace if needed, transmission service if needed (based on mileage), coolant service if needed (based on mileage), hydraulic system service if needed (based on mileage, if applicable), and drain and refill differentials (based on mileage). All required labor, fluids, filters, and parts will be billed at the rates listed below. Actual labor time will shall be billed to the 100th of an hour. Full synthetic oil of the grade specified by the vehicle manufacturer will be used for all oil changes. Avondale will provide the same level of service and use the same quality of fluids and filters that is uses on its own fleet.

3. Repairs include anything not covered in preventative maintenance and shall be billed for actual time as set forth in the table below. Actual labor time shall be billed to the 100th of an hour.

Sublet includes all repairs or warranty work performed by a third-party vendor. Work shall be billed at the vendors cost plus markup indicated in the table below.

An expenditure limit of \$1,500 per service order is pre-approved by Litchfield to allow Avondale to expedite and preventative maintenance or repair services. Any expense beyond \$1,500 shall require approval by Litchfield before work proceeds. Avondale shall use the same standard of care it provides for its own vehicle fleet when assessing the expense of the repair against the value of the vehicle asset and Avondale shall not perform any work that is not necessary in the opinion of Avondale.

4. Delivery of Vehicles: Litchfield is responsible for delivering the vehicles in need of service or repair to the Avondale Municipal Operations Center (MOSC) located at 399 E. Lower Buckeye Road, Avondale, AZ 85323. Litchfield shall pick up vehicles when notified that the services or repairs are complete. Avondale will not pick up or deliver serviced or repaired vehicles.

5. Fee Schedule: All cost for labor, parts, sublets, fluids and tires shall be charged according to the City of Avondale Public Works Fleet Services Division fee schedule, which shall be the same fee schedule used by Avondale to charge services for Avondale-owned vehicles.

The fee schedule for maintenance and repairs of Litchfield vehicles shall be as follows:

Shop Labor Rate	\$135 per hour
Fluids and Parts	Actual cost plus 35%
Tires	Actual cost plus 35%
Vendor sublets	Actual cost plus 35%