

Resolution 004-24

***A Resolution authorizing the execution of a Service Level Agreement
with Mobile Communications America, Inc. for maintenance service, parts and labor on
certain equipment for Irondale Dispatch***

THEREFORE BE IT RESOLVED by the Irondale Emergency Management Communication District, in regular meeting duly assembled, a quorum being present, that Supervisor April Dausch, or her designee, is hereby authorized to execute a service level agreement with Mobile Communications America, Inc. (in substantially the form attached hereto as **Exhibit A**) for maintenance service, parts and labor on certain equipment for Irondale Dispatch for the total sum of \$19,038.84 annually and to execute any document(s) necessary to effectuate such agreement.

ADOPTED & APPROVED: This 6th day of November, 2024.



David Spivey, Chairman

ATTESTED:



Leigh Ann Allison, Secretary

CERTIFICATION

I, Secretary of the Irondale Emergency Management Communication District, hereby certify the above to be a true and correct copy of a resolution adopted by District at its meeting held on November 6th, 2024, as same appears in the minutes of record of said meeting.



Leigh Ann Allison, Secretary

Exhibit A



SERVICE LEVEL AGREEMENT I

MCA Office: Birmingham

This Service Level Agreement (this "Agreement") is entered into by and between Mobile Communications America, Inc. a Delaware corporation ("MCA") and the entity listed below as Customer (referred to herein as, "Customer") as of the effective date listed below.

Effective Date: 9/4/2024
Customer: Irondale 911
Customer Address: 101 20th street South, Irondale AL 35210

WHEREAS, the undersigned (collectively, the "Parties" and each, individually, a "Party") desire to enter into this Agreement to set forth the terms and conditions for the services to be provided by MCA as it applies to maintenance service, parts and labor for the equipment and/or systems as described in Attachment A. Beginning on the effective date of this Agreement, MCA agrees to provide maintenance service to keep covered equipment in good working order.

Summary of Services:

End Date: 9/4/2025 ("Initial Term")
Monthly Price: \$1,586.57
Annual Price: \$19,038.84 (State/Local taxes NOT included)
Billing Frequency: Annual

By signing this Agreement, Customer agrees to accept maintenance service for the listed equipment, per Attachment A, according to the specified terms and conditions of the Agreement. Customer also agrees to provide full, free and safe access to the equipment and/or systems covered by this Agreement. Services provided hereunder do not assure uninterrupted operation of the Equipment or service and MCA is not responsible for failure to render covered service due to causes beyond its control. This Agreement is valid only if signed by an authorized representative or officer of MCA and Customer.

ENTIRE AGREEMENT: This Agreement, together with the SOWs and any Attachments attached thereto, from time to time, sets forth the entire agreement and understanding between the Parties and supersedes all prior negotiations, agreements and understandings with respect to the subject matter of this Agreement. No representations, statements, or inducements, oral or written, not contained herein shall bind either Party. This Agreement may only be amended by a written document duly executed between the Parties. The Customer acknowledges that the Customer has read this entire Agreement, understands it, and agrees to be bound by its terms and conditions.

Signature: [Handwritten Signature]
Name(print) & Title: James D. Fisket City Mayor
Date: 11/18/2024

Signature: _____
Name(print) & Title: MCA
Date: _____

TERMS AND CONDITIONS

NORMAL WORKING HOURS: Normal working hours shall be from 8:00 AM to 5:00 PM, Monday through Friday, except holidays, in the time zone of the Customer location receiving the SERVICE. MCA will perform such repairs as may be required to restore Equipment to their normal operating level, provided that such repairs are necessitated by the failure of the Equipment due to normal usage. Non-fixed Equipment shall be serviced at an MCA shop during normal working hours. Travel charges and expenses incurred by MCA at the request of the Customer to resolve a malfunction of the Equipment that is not covered under this Agreement shall be billable to the Customer at current MCA rates. For emergency service or other service performed at Customer's request outside of normal working hours, for equipment not covered under this Agreement or for Equipment whose failure was due to causes not considered to be "normal usage," Customer will be billed for the service at the then current MCA rates for each occurrence.

PREMIER SERVICE OPTION: If Customer has elected to purchase the Premier Service Option, emergency service is included at no additional charge per occurrence, provided that all other terms of this Agreement are satisfied. Emergency service is provided 24 hours per day, seven days per week. Customers not electing the Premier Service Option shall pay an additional charge for emergency service rendered at current MCA rates for each occurrence.

UNSUPPORTED EQUIPMENT: From time to time manufacturers discontinue or cease to support equipment, which MCA cannot control. In the event that equipment covered by this contract is discontinued or no longer supported by the manufacturer ("Obsolete Equipment"), MCA's recommendation is that the Obsolete Equipment be replaced. In the event that Customer elects not to replace the Obsolete Equipment, MCA will provide its best efforts to repair and maintain the Obsolete Equipment but makes no guarantees or warranties that the Obsolete Equipment will continue to function as intended, or that firmware updates will be available to ensure that the Obsolete Equipment can communicate properly with other equipment in Customer's system. In the event MCA is unable to repair the Obsolete Equipment or the cost of repair in MCA's opinion makes repairing the equipment impractical, MCA will notify the Customer the equipment is non-repairable and remove it from the service agreement.

REPLACEMENT PARTS: MCA will replace parts and components of the Equipment on an exchange basis when failure is due to the normal and proper use of the Equipment. Parts or equipment exchanged back to MCA during maintenance service become the property of MCA.

PREVENTIVE MAINTENANCE: MCA will inspect the Equipment and make such repairs, adjustments, and replacements of parts and components as may be necessary to maintain the Equipment in normal operating condition provided that such services and maintenance are necessitated by normal usage of the Equipment. Inspections and preventive maintenance service will be provided by MCA during normal working hours at the locations specified. All preventive maintenance inspections will be scheduled for mutual convenience and may be performed during remedial service.

LIMITATIONS: MCA reserves the right to inspect any equipment or service prior to its inclusion under the terms of this Agreement. MCA may at its sole discretion require that said equipment or system be restored to proper operating specifications at Customer's expense prior to its being covered under this Agreement. Should Equipment not meet specifications to provide service or MCA, at its sole discretion, declares Equipment to be unserviceable, MCA will provide an Exhibit outlining audit and test results. In such case, MCA's sole responsibility is to remove such Equipment from the billing under this Agreement.

EXCLUDED SERVICES: The following services are not included under the terms of this Agreement. The repair of Equipment, replacement of parts, or any additional service labor due to accident, abuse, disaster, neglect, misuse, physical damage, liquid damage, damage by lightning or other Acts of God, service by personnel other than those authorized by MCA, alterations, modifications, attachments, accessories (other than those specifically designed for use with the particular piece of Equipment), use of Equipment with unauthorized batteries and/or power supplies or reprogramming by other than MCA personnel. Travel charges and expenses incurred by MCA at the request of the Customer to resolve a malfunction of equipment or systems not covered under this Agreement shall be billable to the Customer at current MCA rates. If MCA finds that any Equipment has been altered or repaired by others, such Equipment shall not be covered by this Agreement and any services shall be billable to the Customer at current MCA rates.

RENEWALS: After the Initial Term, this Agreement shall automatically renew for additional one-year periods, with an annual price increase of 5%, unless Customer provides a notice of termination at least thirty (30) days prior to expiration of the then-current Term.

WARRANTY: MCA warrants that it will perform the services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement. EXCEPT FOR THE WARRANTY SET FORTH IN THIS PARAGRAPH, MCA MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (C) WARRANTY OF TITLE, OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

PAYMENT: Payment shall be due and payable thirty (30) days from the date of invoice. Payment shall not be withheld on account of any claim by Customer against MCA. If Customer disputes any portion of a MCA invoice, Customer shall pay the undisputed portion when due and the Parties shall work to resolve the dispute within thirty (30) days. Nonpayment or delay in payment by Customer shall be considered a breach of the Agreement. If the financial condition of the Customer at any time does not, in MCA's sole discretion, justify continuance of performance, MCA may require full or partial payment from the Customer in advance. In the event of bankruptcy or insolvency of the Customer, or in the event any proceedings are brought by or against the Customer under any bankruptcy or insolvency laws, MCA shall be entitled to cancel any Services then outstanding and shall receive reimbursement for any expenses incurred by it in connection with such cancellation and any applicable cancellation charges.

TAXES: Applicable taxes will be billed to the Customer and the Customer hereby agrees to pay said taxes, unless the Customer has provided a current tax exemption certificate.

CUSTOMER DEFAULT: Upon any default by Customer under this Agreement, including the refusal to accept conforming Services, MCA may exercise all remedies to which MCA may be entitled at law or in equity including specific performance. Additionally, MCA may declare all sums due or to become due hereunder immediately due and payable, and MCA shall be entitled to recover all reasonable collection costs incurred, including legal interest. In addition, for non-disputed payments not received within thirty (30) days of the invoice date, a late fee not exceeding the lower of one and a half percent (1.5%) per month or the maximum rate allowed by law shall be assessed on any past due invoice balance. In the event of Customer's default, MCA shall not be obligated to continue performing Services hereunder. Upon Customer default, MCA may at its sole discretion suspend or cancel any outstanding, unfulfilled Services of Customer under this Agreement.

TERMINATION: Customer may, upon thirty (30) days' written notice to MCA, terminate this Agreement for convenience, provided the Customer shall be liable for any third-party costs incurred and outstanding payments to MCA for maintenance services provided. With the exception of the Customer's liability for any and all payments outstanding under this Agreement, neither the Customer nor MCA shall retain any liability for any performance under this Agreement on any date following the expiration of this Agreement.

COVENANT NOT TO SOLICIT: MCA expends considerable resources including money, time, training, etc. to properly train and educate its employees. MCA experiences considerable financial and other harm when its employees are recruited and hired by customers. Therefore, Customer agrees to not recruit or solicit any MCA employee during the term of this Agreement and for a period of two (2) years thereafter. In consideration of MCA performing its services under this Agreement, Customer acknowledges MCA's damages in such event and agrees to pay as liquidated damages for breach of this Section a one-time payment equal to five hundred (500) times the then standard technician hourly billable rate, which is currently \$200/hour. Customer expends considerable resources including money, time, training, etc. to properly train and educate its employees. Customer experiences considerable financial and other harm when its employees are recruited and hired by vendors. Therefore, MCA agrees to not recruit or solicit any Customer employee during the term of this Agreement and for a period of two (2) years thereafter. MCA acknowledges Customer's damages in such event and agrees to pay as liquidated damages for breach of this Section a one-time payment equal to five hundred (500) times the then MCA's

MCA INSURANCE: MCA agrees to carry \$1,000,000 per occurrence general liability insurance and applicable worker's compensation insurance.

CUSTOMER INSURANCE: Customer shall maintain all necessary and appropriate policies of insurance in respect of its obligations under this Agreement. Comprehensive General Liability and Property Insurance for liability, casualty, fire, theft, and property damage under which Customer is named as insured and which shall on a primary and non-contributing basis cover any loss or damage MCA's services are intended to detect to one hundred percent of the insurable value or potential risk. The parties intend that the Customer assume all potential risk and damage that may arise by reason of failure of the equipment, or MCA's services and that Customer will look to its own insurance carrier for any loss or assume the risk of loss. MCA shall not be responsible for any portion of any loss or damage which is recovered or recoverable by Customer from insurance covering such loss or damage or for such loss or damage against which Customer is indemnified or insured. Customer and all those claiming rights under Customer waive all rights against MCA and its subcontractors for loss or damages caused by perils intended to be detected by MCA's services or covered by insurance to be obtained by Customer, except such rights as Customer or others may have to the proceeds of insurance. Customer on its behalf and any insurance carrier waives any right of subrogation Customer's insurance carrier may otherwise have against MCA or MCA's subcontractors arising out of this Agreement or the relation of the

NO CHANGES: Except as previously described, no changes, alteration or modification of this Agreement may be made without the express written consent of both parties.

ASSIGNMENT: Customer shall not assign in whole or in part this Agreement or any interest therein or any rights hereunder without the written consent of MCA, which shall not be unreasonably withheld or delayed. Any such assignment without consent shall be void. Notwithstanding the foregoing, MCA may assign this Agreement or any other agreement between the Parties, without consent in whole or in part, for the purposes of corporate reconstruction, reorganization, or analogous proceeding, or to (a) any affiliate; or (b) a third party in the event of a merger, recapitalization, conversion, consolidation, other business combination or sale of all or substantially all of the assets of MCA to such third party.

GOVERNING LAW AND VENUE: This Agreement is governed by and construed in accordance with the laws of the State of South Carolina without regard to its rules governing conflicts of law. This Agreement shall be binding upon and inure to the benefit of each Party and its respective heirs, successors and assigns. Should any part of this Agreement, for any reason, be declared invalid by a court of competent jurisdiction, such determination shall not affect the validity of any remaining portion, and such remaining portion shall remain in full force and effect. The Parties shall attempt to resolve all disputes arising out of this Agreement in a spirit of cooperation without formal proceedings. Any dispute which cannot be so resolved (other than the collection of money due on unpaid invoices) shall be subject to arbitration upon written demand of either party. Arbitration shall take place in Spartanburg, South Carolina, and shall be the exclusive forum for resolving the dispute, controversy, or claim. The arbitration shall take place before an arbitration panel chosen as follows: The parties shall each choose an arbitrator, and the two (2) arbitrators shall choose a third (3rd) arbitrator and determine the third (3rd) arbitrator's compensation. Each party shall have one (1) veto over the choice of the third (3rd) arbitrator. The three (3) arbitrators shall schedule an informal proceeding, hear the arguments, and decide the matter by secret majority vote. Unless the arbitrators decide otherwise, each party shall pay the costs of its own arbitrator and shall pay half of the other costs of the arbitration proceeding. The award or decision of the arbitrator shall state the reasons upon which the award or decision is based and shall be final and binding upon the Parties. The prevailing Party shall be entitled to compensation for the expense of the arbitration, including, but not limited to, the award of attorneys' fees, at the discretion of the arbitrator. The award shall be enforceable before any court of competent jurisdiction upon the application to such court by either Party. Each Party irrevocably and unconditionally waives any right to a trial by jury in respect to any legal action arising from this Agreement or any other agreement between the Parties.

EXCULPATORY CLAUSE Both Parties agree that MCA is not an insurer, and no insurance coverage is offered herein. The equipment and MCA's services are designed to detect and reduce certain risks of loss, though MCA does not guarantee that no loss or damage will occur. No equipment provided by MCA is represented to be medical grade, FDA approved, or intended for use by a healthcare professional or healthcare facility or to diagnose, treat, cure or prevent disease or medical condition unless explicitly stated in the SOW and no equipment or services are intended to diagnose, treat, cure, prevent, mitigate or minimize the likelihood of communicable disease, infectious agent, bacteria, virus or illness. MCA is not assuming liability, and, therefore, Customer agrees MCA shall not be liable to Customer or any other third party, and Customer covenants not to sue MCA, for any loss, economic or non-economic, business loss or interruption consequential damages, in contract or tort, data corruption or inability to retrieve data, personal injury, health condition or property damage sustained by Customer or others as a result of equipment failure, human error, burglary, theft, hold-up, fire, smoke, water, any communicable disease, infectious agent, bacteria, virus, illness or any other cause whatsoever, regardless of whether or not such loss or damage was caused by or contributed to by MCA's breach of contract, negligent performance to any degree in furtherance of this Agreement, any extra contractual or legal duty, strict products liability, or negligent failure to perform any obligation pursuant to this Agreement or any other legal duty, except for gross negligence and willful misconduct.

LIMITATION OF LIABILITY: MCA SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, DAMAGE OR LOSS OF OTHER PROPERTY OR EQUIPMENT OR SYSTEMS OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MCA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE LIABILITY OF MCA WITH RESPECT TO ANY OF ITS OBLIGATIONS HEREUNDER, INCLUDING SERVICE, SALE, DELIVERY, RESALE, INSTALLATION OR THE TECHNICAL DIRECTION OF INSTALLATION, REPAIR OR USE OF ANY ITEM COVERED BY OR FURNISHED HEREUNDER, WHETHER SUCH LIABILITIES ARE FOUNDED IN CONTRACT, IN TORT, UNDER ANY WARRANTY, OR OTHERWISE, SHALL NOT EXCEED THE PRICE PAID TO MCA WITH RESPECT TO THE SERVICE GIVING RISE TO THE CLAIM. NO ACTION SHALL BE BROUGHT FOR ANY BREACH OF THIS AGREEMENT MORE THAN ONE (1) YEAR AFTER THE ACCRUAL OF SUCH CAUSE OF ACTION EXCEPT FOR MONEY DUE UPON OPEN ACCOUNT.

INDEMNIFICATION: Customer agrees to indemnify, defend, and hold harmless MCA, its officers, directors, employees, and agents (collectively, the "Indemnified Party") from and against any and all liabilities, losses, damages, expenses, liens, claims, demands, actions, judgments, settlements, interest, awards, penalties, fines costs, and expenses, including, without limitation, reasonable attorneys' fees, costs of collection, costs of recovering insurance, and costs of enforcing this indemnification provision (collectively "Claims") arising out of or related to any negligent act or omission of the Customer in connection with the performance of the Services under each SOW. For avoidance of doubt, Customer agrees to indemnify, defend and hold harmless MCA from any failure to mitigate or respond or detect any communicable disease, infectious agent, bacteria or virus.

ATTORNEYS' FEES: Should any dispute arise between the parties regarding the interpretation, application, effect or enforcement of the Agreement, the prevailing party in any legal or arbitration proceedings commenced to resolve the dispute shall be entitled to costs and reasonable attorney's fees incurred in said legal proceeding.

NOTICES: All notices given by one party to the other under this Agreement must be delivered by: (a) hand delivery, (b) certified mail, return receipt requested, (c) nationally recognized overnight courier service, or (d) facsimile, to the other party's respective address given in the preamble to the Agreement.

SEVERABILITY: If any provision or part-provision of this Agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision

COUNTERPARTS: The Agreement may be executed in counterparts, which together constitute one and the same agreement. A facsimile copy or computer image, such as a PDF or tiff image, of a signature shall be treated as and shall have the same effect as an original signature. In addition, a true and correct facsimile copy or computer image of the Agreement shall be treated as and shall have the same effect as an original signed copy of this document.

Equipment and Coverage Details - Attachment A

	MCA Services			
	Repair Qty	24 x7 Coverage	Annual PM	Annual Firmware Update
Public Safety Portable				
PCR Portable				
Public Safety Mobile				
PCR Mobile				
Repeater				
Console	3	3	3	3
Consolettes				
Control Station	5	5	5	5
Avtec ScoutCare	1	1	1	1

Other MCA Services

Special Instructions

Statements of Work - Attachment B

<p style="text-align: center;">MCA Repair Service</p> <p>Subscriber support includes repair. It is the customer's responsibility to get the subscriber to their local MCA facility and ensure MCA has the current programming files on hand. It is MCA's responsibility to</p> <ul style="list-style-type: none">• Triage the device• Ship to the depot if repair cannot be addressed locally• Track repair status• Receive the device back from the depot <p>• Confirm that the radio has been repaired and is programmed to the customer's specifications</p> <ul style="list-style-type: none">• Communicate to the customer their device is fixed <p>Infrastructure support includes M-F 8X5 response to all issues arising from infrastructure, infrastructure cabling and antenna systems. Issues that result from power failure, force majeure, or tampering are excluded from this service. Removal of infrastructure equipment for warranty repair is the responsibility of MCA. Repair of cabling and antenna systems is not a part of this service. After hours support is available upon request but is not covered under this service. Additional charges would apply at after hour rates.</p>	<p style="text-align: center;">MCA 24 x 7 Coverage</p> <p>Adds 24 x 7 x 385 Coverage on Repeaters, Consoles, Consolettes, and Control Stations</p>
<p style="text-align: center;">MCA Annual PM</p> <p>One annual Preventative Maintenance check of the covered equipment. Subscriber Preventative Maintenance includes but not limited to visual inspection of radio, realignment back to factory specifications (transmit power out, transmit frequency error, transmit deviation, and receive sensitivity), and check of battery date code.</p>	<p style="text-align: center;">MCA Annual Firmware Update</p> <p>One annual firmware update of the covered equipment will be completed at the time of the preventative maintenance check.</p>