

WHEN RECORDED RETURN TO:

City of Tempe
31 E. Fifth Street
Tempe, AZ 85281
Attn: City Clerk

**INTERGOVERNMENTAL AGREEMENT
FOR EQUIPMENT FOR WESTSIDE ALL HAZARDS INCIDENT
MANAGEMENT TEAM
BETWEEN THE CITY OF TEMPE
AND
THE CITY OF GLENDALE**

This Intergovernmental Agreement ("Agreement") is made and entered into this ____ day of _____ 2016, ("Effective Date"), by and between the City of Glendale ("Glendale"), a municipal corporation duly organized under the laws of the State of Arizona, and the City of Tempe ("Tempe"), a municipal corporation duly organized and existing under the laws of the State of Arizona. The entities are referred to jointly herein as "Parties" and individually as "Party." This Agreement constitutes the entire understanding and agreement of the Parties.

RECITALS

A. Arizona Revised Statutes ("A.R.S"), § 11-951 through § 11-954, provide that public agencies may enter into intergovernmental agreements for the provisions of services or for joint and cooperative action.

B. Tempe is empowered by Tempe City Charter Section 1.03 to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of Tempe.

C. There are 26 cities in Maricopa County, also known as the Central Region, what are collaborating to develop, equip, and train three All Hazards Incident Management Teams ("AHIMT") at the Type III level. The purpose of the AHIMT is to provide Incident Command Support during major emergency incidents and special events of significance for any community within the Central Region and Statewide as needed. The cities of Glendale, Phoenix, and Tempe, due to their geographical locations, have agreed to host the necessary equipment for their respective AHIMT, Westside, Central, and Eastside.

D. Tempe purchased radio equipment consisting of radios, routers, power supply, modems, antennae, and printers as part of this program. The invoices for the equipment ("Equipment") purchased by Tempe on behalf of the Westside AHIMT and transferred to Glendale as the subrecipient of the grant are attached hereto as ***Exhibit A***.

E. The equipment was purchased with the use of funds secured from the State Homeland Security Grant Program ("SHSGP") initially under grant 11-AZDOHS-HSGP-888213-02 and as reallocated under grant 777214-04 and 10-AZDOHS-HSGP-777214-04 with the understanding of the Department of Homeland Security and Tempe that a portion of the equipment purchased would be provided to the cities of Phoenix and Glendale for their respective fire departments to use as a part of maintaining their respective Central and Westside AHIMT response programs.

F. The Parties desire to enter into this Agreement with the understanding that this is the entire Agreement and with the understanding that each Party bears the sole and complete responsibility for the equipment they receive pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein, and the covenants and promises set forth below, Tempe and Glendale hereby mutually agree as follows:

AGREEMENT

1. **Purpose.** The purpose of the Agreement is to set forth the rights and responsibilities of the Parties with respect to the distribution by Tempe, through the Tempe Fire Medical Rescue Department, of certain Equipment obtained by Tempe.

2. **Equipment.**

A. **Responsibility for and Use of Equipment.** A portion of the Equipment listed in ***Exhibit A*** with a purchase price \$17,961.00 was transferred to the care, custody and control of the Glendale Fire Department for the use of the Westside AHIMT. Tempe maintains no control over said equipment and once the equipment has been transferred to the Glendale Fire Department, and responsibility for said Equipment will be solely that of Glendale. Glendale agrees to be responsible for the installation, maintenance and upkeep, including being responsible for the costs associated with any repairs or replacement, of the Equipment and will deal directly with the manufacturer of said Equipment in relation to any repairs, maintenance, replacements, and/or calibrations of said Equipment subject to any of the terms set forth herein. Glendale acknowledges and agrees that as the subrecipient of the grant funds, it is bound by the terms of the Agreement, including the Property Control and Reporting Requirements, as attached in ***Exhibit B***. Glendale further acknowledges and agrees that Tempe will not be responsible for any maintenance or replacement of, repairs to or calibrating any of the Equipment nor will Glendale seek reimbursement for any related costs from Tempe.

The use of the Equipment set forth herein shall be in accordance with the terms and conditions set forth in the Agreement entered into by Tempe with the Department of Homeland Security, a copy of which is attached hereto as ***Exhibit B***. Glendale agrees to comply with all of the conditions set forth in that agreement.

- B. Equipment Inspection. Glendale agrees to make the Equipment set forth herein available for equipment monitoring and auditing by state and/or federal authorized representatives of the State and/or Federal Departments of Homeland Security. The parties agree and understand that Tempe will not retake possession of the Equipment for any said monitoring and auditing nor will Tempe or any of its employees, agents, departments or any other representative of Tempe be responsible for, or held liable for, conducting any monitoring, auditing or any inspections of any kind of the Equipment transferred to Glendale.
 - C. Disposition of Equipment. Should Glendale determine that it no longer needs said Equipment or wants to discontinue use of said Equipment, Glendale shall follow the mandates set forth in **Exhibit B** and request in writing disposition instruction from the Arizona Department of Homeland Security before actual disposition of the property. Any theft, destruction or loss of the Equipment shall also be reported directly to the Arizona Department of Homeland Security pursuant to the terms of **Exhibit B**.
 - D. Notice to Tempe. Glendale recognizes that the Tempe Fire Medical Rescue Department is keeping a master list of the Equipment distributed to all cities solely for tracking purposes. Glendale agrees to notify the Tempe Fire Medical Rescue Department of any theft, destruction or loss of the Equipment set forth herein.
3. **Payment.** Glendale is not required to pay Tempe for the Equipment received by Glendale under the terms of this Agreement. Rather, Tempe has been reimbursed for the cost of the Equipment by a grant secured from the Department of Homeland Security.
4. **Transactional Conflict of Interest.** All parties hereto acknowledge that this Agreement is subject to cancellation by the Parties pursuant to the provisions of Section 38-511, Arizona Revised Statutes.
5. **Indemnification.**
- A. Indemnification. By entering into this Agreement, the Parties agree that to the extent permitted by law, each Party will indemnify and save the other Party harmless, including any of the Party's departments, agencies, officers, employees, elected officials or agents, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or nonperformance by the indemnifying Party of any of the provisions of this Agreement. By entering into this Agreement, each Party indemnifies the other against all liability (including, but not limited to, vicarious liability), losses and damages of any nature for or on account of any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or

nonperformance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of that other Party. The damages which are the subject of this indemnity shall include but not be limited to the damages incurred by any Party, its departments, agencies, officers, employees, elected officials or agents. In the event of an action, the damages which are the subject of this indemnity shall include costs, expenses of litigation and reasonable attorney's fees.

- B. Survival. This section shall survive termination, cancellation, or revocation whether whole or in part, of this Agreement for a period of one (1) year from the date of such termination, cancellation or revocation unless a timely claim is filed under A.R.S. § 12-821.01, in which case this paragraph shall remain in effect for each claim and/or lawsuit filed thereafter, but in no event shall this paragraph survive more than five (5) years from the date of termination, cancellation or revocation of this Agreement.

- 6. **Warranties and/or Guarantees.** The Parties understand that Tempe has not, will not, and is not required to, perform any independent testing of the Equipment provided to Glendale under the terms of this Agreement and Tempe in no way provides any warranties or guarantees as to the Equipment provided herein. Any warranties or guarantees that may attach to said Equipment are limited to those warranties or guarantees provided by the manufacturer of the Equipment to the purchaser of the Equipment.

7. **Interpretation of Agreement.**

- A. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.
- B. Amendment. This Agreement shall not be modified, amended, altered, or changed except by written agreement signed by both Parties.
- C. Construction and Interpretation. All provisions of this Agreement shall be construed to be consistent with the intention of the Parties as expressed in the recitals contained herein.
- D. Waiver. No waiver, whether written or tacit, of any remedy or provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof or a permanent waiver of the provision concerned, unless otherwise stated in writing by the Party to be bound thereby.

- E. Relationship of the Parties. Neither Party shall be deemed to be an employee or agent of the other Party to this Agreement.
- F. Days. Days shall mean calendar days.
- G. Severability. In the event that any provisions of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of this Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the Parties agree to meet promptly upon request of the other Party in an attempt to reach an agreement on a substitute provision.
8. **Authority.** Tempe and Glendale each represent, warrant and covenant to the other that they have the right to enter into and make this Agreement.
9. **Notices.** Any notice, consent or other communication or modification ("Notice") required or permitted under this Agreement shall be in writing and shall be given by registered or certified mail or in person to the following individuals. The date or receipt of such notices shall be the date the Notice shall be deemed to have been given

For the City of Glendale:

City of Glendale Fire Department
_____ Deputy Chief
5800 West Glenn Drive, Suite 350
Glendale, AZ 85350

With a copy to:
City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, AZ 85301

For the City of Tempe

Tempe Fire Medical Rescue Department
_____ Deputy Chief Special Operations
P.O. Box 5002
Tempe, Arizona 85280-5002

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed the Intergovernmental Agreement on the dates indicated below.

CITY OF GLENDALE, a
municipal corporation

By:_____

Name:_____

Its:_____

Date:_____

CITY OF TEMPE, a
municipal corporation

By:_____

Name:_____

Its:_____

Date:_____

APPROVAL OF ATTORNEY

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorney acknowledges that (i) he has reviewed the above Agreement on behalf of the CITY OF TEMPE and (ii) as to the City of Tempe only, has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the laws of the State of Arizona.

City Attorney

Date

APPROVAL OF ATTORNEY

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned attorney acknowledges that (i) he has reviewed the above Agreement on behalf of the CITY OF GLENDALE and (ii) as to the City of Glendale only, has determined that this Agreement is in proper form and that execution hereof is within the powers and authority granted under the laws of the State of Arizona.

City Attorney

Date

Exhibit A

**EQUIPMENT INVOICES FOR ITEMS PURCHASED
UTILIZING 10-AZ-DOHS-HSGP-777214-04 GRANT FUNDS
AND TRANSFERRED TO SUBRECIPIENT CLENDALE**

Exhibit B

ARIZONA DHS SUBGRANTEE AGREEMENT

10-AZDOHS-HSGP-777214-04

11-AZDOHS-HSGP-888213-02