

WHEN RECORDED RETURN TO:

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

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CITY OF TEMPE
AND
TOWN OF GUADALUPE**

This Intergovernmental Agreement (“Agreement”) is made and entered into this _____ day of _____ 2013, (“Effective Date”), by and between the Town of Guadalupe, a township duly organized under the laws of the State of Arizona, and the City of Tempe (“Tempe” or “City of 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 (ARS), § 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 the City.

C. The program was developed to assist each municipality in providing emergency response within the region, as well as statewide. A goal of this collaboration is to update and replace obsolete communication equipment.

D. The City of Tempe purchased 73 dual band 800 MHz radios from Motorola for use by the Tempe Fire Department as a part of Tempe’s regional radio system maintenance and replacement program pursuant to the Regional Wireless Cooperative (“RWC”) and for distribution to another regional fire department participating in the Assistance to Firefighters Grant Program. Tempe purchased the radios under a larger State of Arizona contract to ensure the best pricing. The Contract for Solicitation # AD050017-A5-6-A10 is attached hereto as *Exhibit A* and outlines all of the equipment purchased by the State including the equipment purchased by Tempe along with the costs associated with the purchase of this equipment.

E. The equipment was purchased with the use of funds secured from the United States Department of Homeland Security (“DHS”) and the Federal Emergency Management Agency’s (“FEMA”) Fiscal Year 2010 Assistance to Firefighters Grant. The grant was awarded with the condition that Tempe would allocate a portion of the equipment purchased to the Town of Guadalupe for their fire department’s use as a part of their effort to update and replace their communication equipment to ensure the communicability between the two agencies in the coming years.

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 will be responsible 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, the City of Tempe and the Town of Guadalupe hereby mutually agree as follows:

AGREEMENT

1. **Purpose.** The purpose of this Agreement is to set forth the rights and responsibilities of the parties with respect to the distribution by the City of Tempe, through the Tempe Fire Department, of certain equipment obtained by the City of Tempe pursuant to a sole source contract to Motorola for seventy-three (73) 800 MHz radios model APX 7000XE, including six (6) radios and accessories purchased for the Town of Guadalupe Fire Department.

2. **Equipment.**

2.1. Responsibility for and Use of Equipment. Attached hereto is a list of all the radio equipment and accessories that was purchased by the City of Tempe from Motorola. **Exhibit B.** The equipment listed in **Exhibit C** will be transferred to the care, custody and control of the Fire Department of the Town of Guadalupe for the exclusive use of that Town’s fire department. The City of Tempe maintains no control over said equipment and once the equipment has been transferred to the Town of Guadalupe, any responsibility for said equipment will be solely that of the Town of Guadalupe. The Town of Guadalupe agrees to be responsible for the maintenance and upkeep, which may include responsibility for the costs associated with any repairs or replacement, of the equipment and may 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. The Town of Guadalupe acknowledges and agrees that the City of Tempe will not be responsible for any maintenance or replacement of, repairs to or calibrating any of the equipment nor will the Town of Guadalupe seek reimbursement for any related costs from the City of Tempe notwithstanding any efforts Tempe Fire Department may willingly offer to assist Guadalupe Fire Department

in the maintenance and calibration of the radios in order to ensure consistency and communicability during emergency operations.

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 the City of Tempe with the Federal Emergency Management Agency, a copy of which is attached hereto as ***Exhibit D***. The Town of Guadalupe agrees to comply with all of the conditions set forth in that agreement.

- 2.2. Equipment Inspection. The Town of Guadalupe agrees to make the equipment set forth herein available for equipment auditing by authorized representatives of the Federal DHS. The parties agree and understand that the City of Tempe will not retake possession of the equipment for any said monitoring and auditing nor will the City of Tempe or any of its employees, agents, departments or any other representative of the City of Tempe be responsible for, or held liable for, conducting any monitoring, auditing or any inspections of any kind of the equipment transferred to the Town of Guadalupe.
- 2.3. Notice to Tempe. The Town of Guadalupe recognizes that the City of Tempe Fire Department is keeping a master list of the equipment distributed solely for tracking purposes. The Town of Guadalupe agrees to notify the City of Tempe Fire Department of any theft, destruction or loss of the equipment set forth herein.
3. **Payment**. There shall be payment for the equipment received by the Town of Guadalupe under the terms of this agreement in the amount of 20% matching funds per the FEMA Grant totaling \$9,320.00. Funds must be paid to City of Tempe within 30 days of receipt of billing. The City of Tempe has been reimbursed for the remainder cost of the equipment by the Assistance to Firefighter's Grant secured from the DHS and additional funding from a Capital Improvement Plan.
4. **Transactional Conflict of Interest**. All parties hereto acknowledge that this Agreement is subject to cancellation by the City of Tempe pursuant to the provisions of Section 38-511, Arizona Revised Statutes.
5. **Indemnification**.
 - 5.1. Indemnification. The Town of Guadalupe shall indemnify, defend, save and hold harmless Tempe, its departments, agencies, boards, commissions, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") for, from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or

loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the use of, the equipment transferred hereunder. This would include any claims related to the failure of the equipment to perform properly.

5.2. Severability. 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 the City of Tempe has not, will not, and is not required to, perform any independent testing of the equipment provided to the Town of Guadalupe under the terms of this Agreement and the City of 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 and which are set forth in the purchase agreement between the City of Tempe and the manufacturer, which is attached hereto as *Exhibit A*.

7. **Interpretation of Agreement.**

7.1. 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.

7.2. Amendment. This Agreement shall not be modified, amended, altered, or changed except by written agreement signed by both parties.

7.3. 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.

7.4. 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.

7.5. Relationship of the Parties. Neither party shall be deemed to be an employee or agent of the other party to this Agreement.

- 7.6. Days. Days shall mean calendar days.
- 7.7. 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 the 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 Guadalupe 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 of receipt of such notices shall be the date the notice shall be deemed to have been given.

For the Town of Guadalupe: Town of Guadalupe Fire Department
 Interim Fire Chief Wayne Clement
 8413 S. Avenida Del Yaqui
 Guadalupe, Arizona

For the City of Tempe: Tempe City Fire Department

 Fire Chief Greg Ruiz
 P.O. Box 5002
 Tempe, Arizona 85280-5002

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

TOWN OF GUADALUPE, a
 township

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 TOWN OF GUADALUPE and (ii) as to the Town of Guadalupe 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 CITY 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.

Interim City Attorney

Date