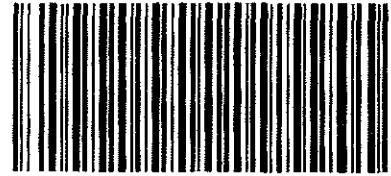


**RETURN TO
HELP**



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2009-0112640 02/10/09 04:44 PM
4 OF 13

GARCIA

WHEN RECORDED RETURN TO:

City of Tempe Basket

**C2008-247
INTERGOVERNMENTAL AGREEMENT FOR
THE PROVISION OF FIRE PROTECTION SERVICES TO THE TEMPE COUNTY ISLAND
FIRE DISTRICT BY THE CITY OF TEMPE,
MARICOPA COUNTY, ARIZONA**

THIS AGREEMENT ("Agreement") is entered into between the City of Tempe, an Arizona municipal corporation, ("City") and the Tempe County Island Fire District, a political subdivision of the State of Arizona, ("Fire District"), collectively referred to in this Agreement as the "Parties."

RECITALS

The City Charter and A.R.S. §11-952, et seq. authorize the City, and A.R.S. §§ 48-853 (A) (8 (a) and 48-853 (A) (10) authorize the Fire District to enter into intergovernmental agreements for the provision of joint action or services, including fire protection services; and

A.R.S. § 48-853 authorizes a city to provide fire protection services outside its corporate limits to non-contiguous county islands formed into a Fire District; and

The Tempe County Island Fire District has been duly formed by the Maricopa County Supervisors according to law; and

The City is willing to provide fire protection and emergency medical services for property within the Fire District provided that the City is paid for the cost of providing these services, including payment covering system development, infrastructure, and equipment costs, as applicable.

The Parties desire to enter into this Agreement to provide fire protection services within the boundaries of the Fire District.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual promises and obligations contained in this Agreement, and for other good and valuable consideration, it is agreed as follows:

Article 1. Definitions.

A. "Automatic Aid" means the fire and medical response system, operated by the Phoenix Regional Dispatch System or the Mesa Regional Dispatch System covering the majority of Maricopa County and portions of Pinal County, using satellite and computerized dispatching, and common communications and operating procedures, that provides a seamless fire and emergency medical services crossing jurisdictional lines.

B. "Contract Administrator" for the Fire District means the Chairperson of the District Board.

C. "Day" means a calendar day, without regard to whether it is a Saturday, Sunday or holiday.

D. "Emergency" means an incident that poses an immediate threat to life, property, and/or public safety.

E. "Emergency Medical Services" means emergency medical services performed by Fire Department Personnel as a first responder. It does not include ambulance services as regulated by Title 36 of the Arizona Revised Statutes.

F. "Fire Inspector" means a Tempe Fire Department employee hired to inspect and enforce the Tempe Fire Code and its addenda within the Fire District.

G. "Fire Protection Services" means such services as are regularly provided by a municipal fire department and includes, but is not limited to, fire prevention, emergency medical services, inspection of commercial or industrial property for code violations and enforcement. It does not include inspection and code enforcement in residential property.

H. "Mutual Aid" means service by the City, which is rendered outside the City, pursuant to a written agreement between the City and another governmental agency for mutual emergency aid.

Article 2. Fire District Area.

The area comprising the Fire District covered by this Agreement is that area approved by the Maricopa County Board of Supervisors and depicted on the map, attached as Exhibit "A" and by this reference made a part of this Agreement, as such area may be altered through amendment from time to time.

Article 3. Term of Agreement.

Subject to the provisions for early termination as stated in Article 10, the term of this Agreement will be for a period of five years, beginning on the date the City begins providing fire protection services under this Agreement. This Agreement may be renewed for additional three year terms by mutual agreement of the Parties after first giving 365 days written notice of their intention to renew. The City will begin providing fire protection services on the 12th day of December, 2008. The obligations stated in Articles 5 and 13 will survive the termination or expiration of this Agreement.

Article 4. Scope of Services and Response Performance.

A. **Equivalent Response.** The City will initially provide fire protection services to property within the Fire District during the term of this Agreement using the City's existing levels of infrastructure and equipment. Except as expressly provided to the contrary, the provision of fire protection services under this Agreement will be subject to the limitations of infrastructure, and equipment available to provide response within the Fire District. Recognizing that limitation, the City will provide fire protection services to the Fire District in the same manner as it provides these services to City residents within the City's jurisdictional limits. Except as is stated otherwise in this Agreement, the City specifically represents that it is not undertaking any additional duty to act, guaranteeing any response times or agreeing to obtain any additional fire protection services capacity or infrastructure by virtue of its obligations under this Agreement.

B. **Response Issues.** It is also expressly acknowledged that the City's response to any emergency call within the Fire District may be impacted by certain safety or infrastructure related issues as described in Article 6 and certain response related issues as described in Article 11.

Article 5. Payment for Fire Protection Service Provided.

The Fire District will pay the City for the fire protection services provided in accordance with the payment formula as stated in Exhibit "D", attached and by reference made a part of this Agreement. Payments must be made in accordance with the payment schedule as provided in Exhibit "D", attached and by reference made a part of this Agreement. The first payment in the amount of \$97,956.50 will be made on December 1, 2008.

The Fire District and the City acknowledge that the fee paid to the City by the Fire District is a function of the annual budget adopted by the City for its Fire Department. As the City's Fire Department budget is revised from time to time, pursuant to a resolution adopted by the City Council of the City, the fee paid by the Fire District to the City shall be revised in accordance with the formula set out in Exhibit "B" to this Agreement. The City agrees to provide the Fire District with all public documents distributed by the City, at the time they are distributed, related to development, review and final adoption of the City's Fire Department budget.

Article 6. Additional Resources.

A. **Infrastructure.** The City and the Fire District may agree to the installation of certain fire related infrastructure within the Fire District or the acquisition of certain capital equipment necessary to provide fire protection services to the Fire District. The City and the Fire District agree to meet from time to time and not less than annually to review proposals for the acquisition of new infrastructure and to consider such mechanisms for financing infrastructure improvements. The scope and expense of any infrastructure constructed or installed in the Fire District is a matter within the sole and absolute discretion of the Fire District Board. Both Parties understand that the City's ability to respond to calls for service in the District is limited by the adequacy of the infrastructure.

B. **Management and Control.** In the event additional resources are authorized by the Fire District Board it is acknowledged that the City will determine, at its sole discretion, the location of infrastructure to be installed within the Fire District and the deployment of any additional equipment to be acquired. Further, installation or acquisition of equipment or infrastructure will be done by the City. The City will only add additional resources to be

devoted solely to providing fire protection services to the Fire District when the Fire District agrees to reimburse the City in full for the agreed upon costs. The Fire District and the City agree that additional resources described in Exhibit "C" and the payment for those resources described in Exhibit "B", attached and by reference made a part of this Agreement are agreed to by both Parties. The City will hire one full-time Fire Inspector whose duties will include but are not limited to code inspection and enforcement arising out of this Agreement. Should this Agreement not be renewed at the end of its term, or be terminated by either Party before its termination date, the entire remaining unpaid balance of all sums due must be paid in full on or before the final termination date. Failure to pay may subject the Fire District to any and all remedies available to the City, at law or in equity, including but not limited to, the imposition of compound interest at the rate of 12% per annum from the date of termination of the Agreement until paid, and the recovery of reasonable attorney's fees, expert witness fees and taxable court costs.

C. Capital Buy-In. It is agreed that the Fire District will be receiving the benefit of the fire protection services from the City's Fire Department that has been developed and expanded over many years of investment by the citizens of the City. The Parties believe it would be fair and equitable for the Fire District to pay to the City a contribution toward the development of the City's Fire Department. The Parties agree that buy-in contribution and the timing of payment of that contribution provided in Exhibit "C" attached and by reference made a part of this Agreement, is a fair and equitable contribution by the Fire District toward the development of the City's Fire Department. One half of the buy-in costs found in Exhibit "C" shall be paid in the first year of this Agreement and the remaining balance of the buy-in costs shall be paid in the second year of this Agreement. The City will not seek any additional buy-in contribution from the District beyond that expressly set out here, notwithstanding any subsequent renewals or extensions of this Agreement. Should this Agreement not be renewed at the end of its term, or be terminated by either Party before its termination date, the entire remaining unpaid balance of the contribution must be paid in full on or before the final new termination date. Failure to pay may subject the Fire District to any and all remedies available to the City, at law or in equity, including but not limited to, the imposition of compound interest at the rate of 12% per annum from the date of termination of the Agreement until paid, and the recovery of reasonable attorney's fees, expert witness fees and taxable court costs.

D. Failure to Pay. The City may, after giving 90 days written notice, terminate this Agreement if the Fire District fails to make the required payments as required by this Article 6.

Article 7. Safety Issues.

A. General. While the City has agreed to provide fire protection services to property within the Fire District, it is agreed that the City must protect the safety of its emergency response personnel and that certain infrastructure issues and hazardous material storage practices, which would not be permitted within the City, may currently exist within the Fire District, increasing the risk to the City's first response personnel. It is also agreed that, where these infrastructure issues and hazardous material storage practices are implicated, they may limit the scope and effectiveness of the services that the City will provide to property located within the Fire District. As a result, the following limitations are acknowledged by both Parties:

1. Bridges. The City may not be able to respond to an emergency, or may need to alter its typical or preferred response methodology, where access to the property within the Fire District requires the crossing of a bridge that has not been demonstrated

to satisfy the requirements of Section 503.2.6 of the 2003 edition of the International Fire Code. Any demonstration of compliance with this bridge standard offered by the Fire District must be to the satisfaction of the City.

2. **Site Access.** The City may not be able to respond to an emergency or may need to alter its typical or preferred response methodology, where the street leading to the property within the Fire District is not adequately designed or maintained to support large or heavy emergency response vehicles or where access to the site is otherwise limited by structural issues.

3. **Water Supply.** The City will be severely limited in its ability to provide effective fire service to property within the Fire District without proximately located fire hydrants or where any proximately located hydrants have inadequate water pressure. It is also acknowledged that the City's ability to haul water to property within the Fire District is limited to the capacity of the current fire apparatus fleet.

4. **Hazardous Substances.** The City will be limited in its ability to provide effective emergency services to property within the Fire District that may store or use hazardous materials where the quantities, location and handling practices for these hazardous materials are not documented and provided to the City before an emergency response and where the location and handling practices are not in compliance with Section 2703.1 of the 2003 edition of the International Fire Code.

5. **Structural Integrity.** The City will be limited in its ability to provide effective emergency service for structures located on property within the Fire District, particularly commercial and industrial structures, without documentation as to the composition, room location and structural integrity of those structures before an emergency response and where the structure does not comply with the provisions of Section 110.1 of the 2003 edition of the International Fire Code relating to structural integrity.

6. **Knowledge of Hazards.** The City will generally not enter commercial and industrial structures where hazardous materials may be stored unless (1) the City has previously been given access to the property to become familiar with the operations, contents and physical characteristics of the structure, and (2) the operations and physical characteristics of the structure generally conform to standards stated in the 2003 edition of the International Fire Code Section 2703.8. The decision as to whether to enter any facility, even where previous access has been provided, will rest solely with the incident commander in charge of the emergency response, based on risk management profiles.

7. **New Construction.** All new construction in the Tempe County Fire District will be in accordance with Tempe City Code, Chapter 14-Fire Prevention and Protection. The City and District acknowledge that inspections and enforcement of code matters pursuant to this Agreement is limited to the City's Fire Code and that the City shall not seek to enforce any other of its codes in the District.

8. **Other Issues.** All emergency services will be provided to the Fire District consistent with the geography of the Fire District, the location of fire stations, current infrastructure, water access, streets and the building code of Maricopa County. In the event there is a conflict between Maricopa County codes and the Tempe City Code,

Chapter 14-Fire Prevention and Protection; the Tempe City Code, Chapter 14-Fire Prevention and Protection shall apply to the conflicting issue. It is agreed that the recitation of some safety-related issues in this Article is not meant to be all-inclusive. It is agreed further that the City will generally assume the worst, when dealing with unknown conditions while providing emergency services in compliance with the terms of this Agreement.

Article 8. Notice Regarding Safety Issues.

A. **Notification of Safety Issues.** The City will not have any obligation to inspect facilities within the Fire District for any of the safety-related issues stated in Article 7 that may exist on a property within the Fire District. Either Party is free at any time to notify the other of safety issues that it discovers.

B. **Code Enforcement.** The Fire District must adopt the City's Fire Code, and keep 3 copies on file with the Fire District. The Fire District and City's authority to conduct inspections using that Fire Code is applicable only to commercial and industrial properties, and does not apply to residential properties. The City and District acknowledge that inspections and enforcement of code matters pursuant to this Agreement is limited to the City's Fire Code and its addenda and that the City shall not seek to enforce any other of its codes in the District. Subject to the above limitations, either Party may inspect commercial and industrial properties and review structural and operational issues with property owners located within the Fire District, make recommendations based on these reviews, and, at its sole election, report compliance issues that either Party may discover to the State Fire Marshal, the other party or other applicable regulatory agencies. Where the City knows of a Code violation, it may seek enforcement of the Code for these known violations in accordance with City of Tempe Code, Chapter 14. Nothing contained in this Article will be construed in any manner as requiring the City to report any compliance issues.

Article 9. Management of Fire Protection Services.

The City will be responsible for managing the day to day operations necessary for the provision of fire protection services to the Fire District in conjunction with similar services provided within the City.

Article 10. Termination.

Either Party has the right to terminate this Agreement after first giving 365 days written notice to the non-terminating Party. If the City determines that the Fire District has failed to meet its primary responsibilities under this Agreement the City may terminate this Agreement, after first giving 90 days notice to the Fire District.

Article 11. Fire and Emergency Medical Dispatch Services.

The City will be responsible for providing fire and emergency medical dispatch services through the Phoenix and Mesa Regional Dispatch Center. The City will provide all necessary radio transmitting and/or receiving equipment that may be reasonably necessary to provide standard radio coverage to most areas of the Fire District. It is acknowledged that the City may be limited in its ability to provide effective fire and emergency medical dispatch and communication services for structures located on property within the Fire District, particularly commercial and industrial structures.

Article 12. Mutual Aid and Automatic Aid Consortium.

The Fire District will not enter into any mutual aid agreements in its own name. During the term of this Agreement only, the Fire District will become a member of the Regional Automatic Aid Consortium through the execution of this Agreement.

Article 13. Indemnification.

A. Indemnification of the City. To the fullest extent permitted by law, the Fire District, its successors, guarantors, and assigns will defend, indemnify and hold harmless the City, its authorized agents, authorized representatives, officers, directors, officials and employees from and against any injury, the death of any person or loss or damage to any property all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all reasonable fees for experts and other professionals, related to, arising from or out of, or resulting from any actions or intentional actions caused by the City or its employees, authorized agents, authorized representatives or contractors directly attributable to the provision of services under this Agreement, excepting only gross negligence on the part of the City, its employees, authorized agents, authorized representatives or contractors. This indemnification specifically includes any claim or expense associated with the City limiting the scope of the fire protection services provided for a particular property within the Fire District in the manner specified in this Agreement.

B. Additional Indemnification. In addition to the indemnification provisions stated in Subsection A, the Fire District will indemnify and hold harmless the City, its officers, agents and employees from and against claims or expenses, including penalties and assessments and attorney's fees to which they or any of them may be subjected to by reason of injury or death of any person, or loss or damage to any property directly contributed to or directly caused by:

1. The City's provision of fire protection services to any person or property located within the Fire District. Unless the City is found to be grossly negligent, the City is not liable for any services provided as relates to infrastructure or safety issues, as described in Article 7 of this Agreement, or dispatch issues as described in Article 11 of this Agreement.; and

2. A lack of applicable fire and building code enforcement regarding structures located on property within the Fire District or any lack of notice of a safety issue to any property owner within the Fire District; and

3. Any liability or claim associated with those services excluded under Article 14 of this Agreement.

C. Dispute Resolution. The Parties agree that in the event that there is a dispute regarding indemnification, the matter may be submitted to mediation or any other alternative dispute resolution process as the Parties may agree. If no agreement can be reached, jurisdiction for any court proceeding will lie in the Maricopa County Superior Court. The prevailing Party will be entitled to recover against the other Party its reasonable attorney's fees, expert witness fees and other taxable costs incurred in connection with the action.

D. Indemnity's Effect on the Insurance Provisions. The Insurance provisions in this Agreement are separate and independent from the indemnity provisions of these articles and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of these articles will not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

Article 14. Clean Up.

The City will not be responsible for, or provide any clean-up or response relating to debris, residue or waste generated by providing fire protection services under the terms of this Agreement.

Article 15. Insurance Representations and Requirements.

The Fire District will secure insurance sufficient to cover its liability exposure in an amount and under the coverage term set forth in Exhibit "E," attached and by reference made a part of this Agreement. The City will not make any liability claims against the Fire District involving allegations of the City's sole gross negligence or intentional misconduct in excess of the coverages provided in Exhibit "E." Nothing in this Agreement prohibits the City from pursuing claims against Fire District or its successors in interest in excess of the coverages set forth in Exhibit "E." The City will meet its statutory obligation to maintain workers' compensation insurance for all of its employees.

The City will be an additional insured to the full limits of liability purchased by the Fire District and Fire District insurance coverage must be primary and non-contributory with respect to all other available sources.

Insurance Services Office (ISO) Public Property Classification ratings of the City will not apply to the Fire District. The Fire District will be responsible for independently obtaining an I.S.O. rating based solely on the capability of the Fire District to address; receiving and handling fire alarms, water supply and fire department capabilities. The Fire District contract for service with the City will not degrade or affect the City's attained I.S.O. rating.

Article 16. Reports.

The City will provide the Fire District with quarterly reports identifying the incidents it responded to and the services provided within the Fire District. These incidents will also be included as part of City's regularly prepared annual report, a copy of which will be filed with the Fire District within 15 days after the report is published each fiscal year. This requirement will continue for the life of this Agreement in a format mutually agreed to by the Parties which will provide information specific to fire protection services within the Fire District.

Annually, following its adoption by the City, the City will provide the District with a copy of the Fire Department's budget for the upcoming fiscal year.

Article 17. Default and Remedies.

In the event that a Party is in default under this Agreement, the other Party will have all remedies available to them at law or in equity (including expedited equitable relief) whether under this Agreement or otherwise. The duties and obligations imposed by this Agreement and the rights and remedies available, other than the indemnification provisions, will be in addition to

and not a waiver or limitation of any duties, rights and remedies otherwise imposed or available at law or equity.

A. Notice and Opportunity to Cure. If a Party believes the other Party is in default under the terms of this Agreement, the non-defaulting Party will give the defaulting Party 30 days written notice of the nature of the default. The defaulting Party will have a period of 30 days within which to cure or commence efforts to cure the default before the default becomes actionable. If the defaulting Party has commenced good-faith efforts to cure the default within the 30 day period, but the nature of the default will not permit a cure within this period, the failure to cure within the 30 day period will not be considered a default, provided the defaulting Party completes the cure within a reasonable period of time. This Article will not apply to any default that occurs as a result of a failure on the part of the Fire District to pay its obligations under this Agreement. No advance notice is required by the non-defaulting Party if the default is considered to be an imminent threat to the public health, safety or welfare.

B. Dispute Resolution. Before conducting any litigation relating to this Agreement, and in addition to the dispute resolution provisions provided in Article 13.C, the City and the Fire District will negotiate in good faith and attempt to resolve any dispute, controversy, claim or default arising out of this Agreement.

Article 18. Contract Administrator.

The Contract Administrator for the Fire District for this Contract will be the Chairperson of the Fire District Board. The Contract Administrator may act on behalf of the Fire District where there is mutual agreement between the Fire Chief and the Contract Administrator that if the Fire Chief were to act on any issue, the Fire Chief may have a possible conflict of interest.

Article 19. Miscellaneous Provisions.

A. Governing Law. This Agreement will be governed, construed and controlled according to the laws of the State of Arizona.

B. Waiver. No delay or failure to exercise any right or remedy will constitute a waiver of the right or remedy, and no waiver by the Parties of the breach of any provision of this Agreement will be construed as a waiver of any other provision.

C. Severability. The terms and conditions of this Agreement are severable. If for any reason, any court of law or administrative agency should consider any provision of this Agreement invalid or inoperative, the remaining provisions of this Agreement will remain valid and in full force and effect.

D. Legal Fees, Costs and Expenses. In the event either Party brings any action for any relief, declaratory or otherwise, arising out of this Agreement, the prevailing Party will be entitled to reasonable attorney's fees, costs and expenses, as determined by the court, and which will be considered to have accrued on the commencement of the action. This provision will be enforceable whether or not any action is prosecuted to judgment.

E. No Partnership. It is not intended by this Agreement that anything contained in it will create any legally recognized partnership, legally recognized joint venture or legally recognized agency relationship between the City and the Fire District.

F. **No Third Party Beneficiaries.** No term or provision of this Agreement will benefit any third person, or any other firm, organization, or corporation not a Party to this Agreement, and no person, firm, organization, or corporation will have any right or cause of action under this Agreement.

G. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. No representations, agreements or understandings, oral or written, other than those stated in this Agreement will vary its terms.

H. **Counterparts.** This Agreement may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Agreement will be considered to possess the full force and effect of the original.

I. **Captions.** The captions used in this Agreement are solely for the convenience of the Parties, do not constitute a part of this Agreement and are not to be used to construe or interpret this Agreement.

J. **Conflict of Interest.** Pursuant to the provisions of A.R.S. § 38-511, the City may cancel this Agreement, without fee reduction or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the City is at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other Party to the Agreement in any capacity to any other Party to the Agreement with respect to the subject matter of the Agreement. The City is unaware of any conflict as of the date of the execution of this Agreement.

K. **Authority.** Each Party warrants and represents that it has full power and authority to enter into and perform this Agreement, and that the person signing on behalf of each has been properly authorized and empowered to sign this Agreement. Each Party further acknowledges that it has read this Agreement, understands it, and agrees to be bound by it.

L. **Assignment.** Neither Party may assign or delegate the rights or obligations of this Agreement except with the written consent of the other Party.

M. **Liens.** The City will not take any action that causes a lien to be placed on any Fire District property. In the event of a lien, the City will notify the Fire District and take steps to immediately extinguish the lien.

N. **Regulatory Compliance.** The Parties agree to comply with all applicable state and federal laws and regulations.

O. **Interpretation and Definitions.** The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party will not apply in the interpretation of this Agreement.

P. **Time of the Essence.** Time is declared to be of the essence of the performance of all terms, covenants, conditions and obligations contained in this Agreement.

Q. **Force Majeure.** Either Party will be excused for failures and delays in performance of its respective obligations under this Agreement due to any cause beyond its control and without fault. Nevertheless, each Party will use its best efforts to avoid or remove

those causes and to continue performance whenever the causes are removed, and will notify the other Party of the problem.

R. **Amendment.** The terms contained in this Agreement may only be amended with City Council and Fire District Board approval.

S. **Recitals.** The Recitals are by this reference made a part of this Agreement.

T. **Notice.** Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively, "Notices") required by this Agreement will be given by certified U.S. Mail, postage prepaid or personally delivered, against receipted copy, at the address stated below or at any other address as either Party will, from time to time, designate in writing to the other given in the same manner specified in this Article. Notices will be considered received upon receipt, will be evidenced by a receipted copy (in the case of notices that are personally delivered), or as evidenced by the postal service receipt. Notice by facsimile or electronic mail will not be considered adequate notice.

If to the Fire District:

Clerk of the TCIFD Board
PO Box 12303
Tempe, AZ 85284

With a copy to:

Lee Miller
Miller, LaSota & Peters, PLC
722 E. Osborn, Suite 100
Phoenix, AZ 85014

If to the City:

Fire Chief
Fire Administration
1400 E. Apache Blvd.
Tempe, AZ 85281

With a copy to:

Tempe City Attorney's Office
P. O. Box 5002
Tempe, AZ 85280

U. **Legislative Changes.** Should the Arizona Legislature change the provisions of the legislation dealing with Non-Contiguous County Islands in such a manner as to deny either Party the benefits of their bargain under the terms of this Agreement, the Parties will negotiate in good faith to amend the Agreement in a manner so as to preserve the benefits of this Agreement to both Parties. But if either party believes the legislation has been changed in such a manner as to deny the party the benefits of their bargain, that party may terminate this Agreement on giving the other party 90 days written notice.

V. **Nonappropriation of Funds.** If funds are not appropriated by the City Council for this Agreement, the City will terminate this Agreement as required by A.R.S. § 42-17106.

[SIGNATURE PAGE TO FOLLOW]

THE PARTIES have executed this Intergovernmental Agreement by signing their names on the day and year stated below.

CITY OF TEMPE

FIRE DISTRICT

By: [Signature]
Its: Mayor

By: [Signature]
Its: Fire Chief

Date: December 11, 2008

Date: 12/18/08

ATTEST:

[Signature]
City Clerk

The undersigned attorney for the City certifies that the attorney has reviewed this Agreement and finds that it is in proper form and within the power and authority granted to the City under the laws of the State of Arizona.

[Signature]
City Attorney

The undersigned attorney for the Fire District certifies that the attorney has reviewed this Agreement and finds that it is in proper form and within the power and authority granted to the City under the laws of the State of Arizona.

[Signature]
County Attorney
DISTRICT

CERTIFICATION BY COUNTY ATTORNEY

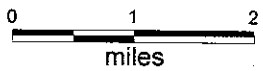
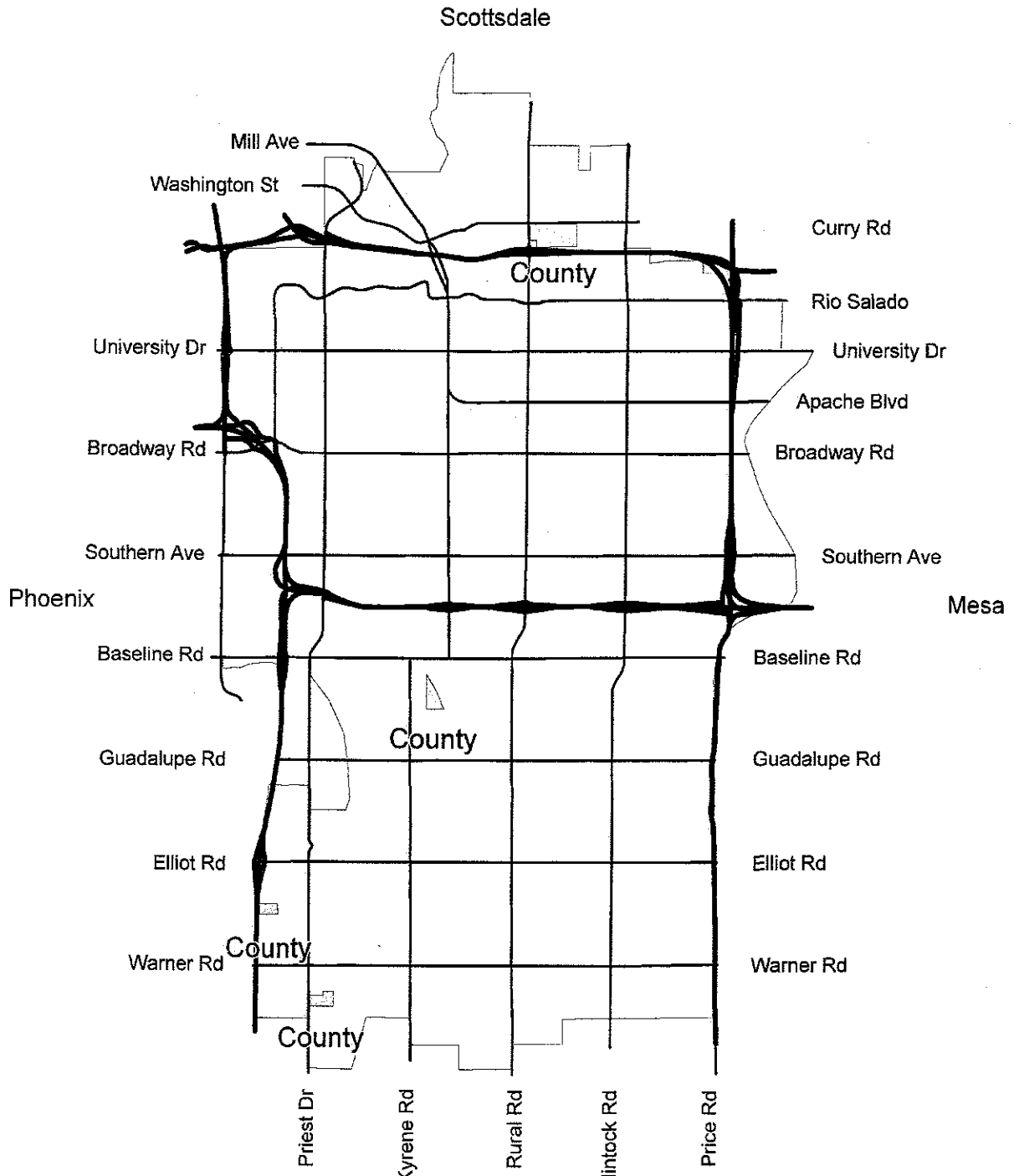
Pursuant to A.R.S. §48-853(A) (8) (c), the Maricopa County Attorney's Office has reviewed the negotiations and proposal as set forth in this Agreement and has determined they are based on commercially reasonable assumptions.

By: *Carl F. Thomas*

Its: MARICOPA COUNTY ATTORNEY

Date: 2/6/09

Tempe County Island Fire District Exhibit A



City of Tempe Engineering
GIS Dept.
December, 2008
CountyIslandFireDistrict.WOR

EXHIBIT "B"**FIRST
YEAR**

Based on FY07/08 Adopted Budget

	Adopted Fiscal Year Operating Budget	21,007,144
Subtract	Revenue Offsets	(641,057)
Add	Capital Expenses	
	Subtract capital outlay in beginning operating budget	(623,400)
	Add depreciation expenses for all capital expenses	1,393,344
	Add interest expense for bond funded assets	394,421
Add	City Overhead Rate	<u>1,393,751</u>
Equals	Total Fire Department Budget	22,924,203
Divided by	City Secondary Assessed Value	2,401,898,465
Equals	Unit Cost	0.009544
Multiplied by	Fire District Secondary Assessed Value	11,829,915
Equals	Fire District Cost	112,907
Buy In Cost	Fire Inspector	83,006
Total Cost		<u>\$ 195,913</u>

EXHIBIT "C"

Buy-in Cost		
Fire Inspector		
	Salary and Benefits	68,454
	Operational Supplies	4,795
	Equipment	9,757
Total		\$83,006

The City and the District agree that the Fire Inspector position to be funded from the Buy-In contribution made by the District to the City shall be created, hired and managed by the City, pursuant to the City's existent human resources policies and procedures. The City agrees that, for the twelve month period following the Effective Date of this Agreement, the Fire Inspector position paid for by the Buy-In Contribution shall be primarily but not exclusively dedicated to undertaking inspections in the District. The District's obligation with regard to funding the Fire Inspector position is limited to that set out here in Exhibit C. The City may, but is not required to, continue to fund this Fire Inspector position, from its own funds.

EXHIBIT "D"**Schedule of Payments**

Two equal payments are due December 1st and June 1st of each year.

In the first year,

December 1, 2008	\$97,956.50
June 1, 2008	\$97,956.50
Total due	\$195,913.00

EXHIBIT "E"**Insurance Requirements:**

Fire District shall procure and maintain for the duration of the Agreement insurance against claims for injuries (including death) to persons and damages to property, which may arise from or in connection with the performance of the work hereunder in this Agreement. If self-insured, proof of self insurance with minimum limits expressed below must be submitted on proper forms prior to commencement of Agreement.

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including coverage for contractual liability (including defense expense coverage for additional insureds), personal injury, broad form property damage, products and completed operations. The general aggregate limit shall apply separately to this project/location or the general aggregate shall be twice the required occurrence limit.

Other Insurance Provisions

The policies or self insurance certifications are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage:
 - a. The City, its officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Fire District including the insured's general supervision of the Fire District; products and completed operations of the Fire District; premises occupied or used by the Fire District. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.
 - b. The Fire District's insurance coverage shall be primary as respects the City, its officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees, or volunteers shall be in excess of the Fire District's insurance and shall not contribute to it.
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or volunteers.
 - d. Coverage shall state that the Fire District's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
2. All Coverages
 - a. Each insurance policy required by this Agreement shall be endorsed to state the coverage shall not be suspended, voided, and/or canceled by

either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Other Insurance Requirements: Fire District shall:

1. Prior to commencement of services, furnish the City with certificates of insurance, in form and with insurers acceptable to the City which shall clearly evidence all insurance required in this contract and provide that such insurance shall not be canceled, allowed to expire or be materially reduced in coverage except on 30 days prior written notice to and approval by the City, and in accord with stated insurance requirements of this bid solicitation. City shall not be obligated, however, to review same or to advise Fire District of any deficiencies in such policies and endorsements, and such receipt shall not relieve Fire District from, or be deemed waiver of City's right to insist on, strict fulfillment of Fire District's obligations under this Agreement.
2. Provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance.
3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
4. Maintain such insurance from the time services commence until termination of this Agreement. Should any required insurance lapse during the Agreement term, the City reserves the right to discontinue Fire Service until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
5. Place such insurance with insurers and agents licensed and authorized to do business in Arizona and having a "Best's" rating of no less than A-VII.
6. Maintain such coverage continuously throughout the term of this Agreement and without lapse for a period of two years beyond the Agreement expiration, should any of the required insurance be provided under a claims-made form, to the extent that should occurrences during the Agreement term give rise to the claims made after termination of the Agreement, such claims shall be covered by such claims-made policies. Such extension of coverage shall be evidenced by annual certificates of insurance.