

RESOLUTION NO. 40-2008

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF ARIZONA, DEPARTMENT OF HEALTH SERVICES, FOR THE USE OF AUTOMATED EXTERNAL DEFIBRILLATOR EQUIPMENT.

WHEREAS, the Arizona Department of Health Services (the "State") has established a program to purchase automated external defibrillators for providers of emergency medical services; and

WHEREAS, the City of Benson has a Fire Department which provides emergency medical services; and

WHEREAS, the City is in need of AEDs and desires the use of AEDs provided by the State; and

WHEREAS, staff from the State has drafted an Intergovernmental Agreement, attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, the State and the City desire to avail themselves of all provisions of law applicable to this Agreement and desire to enter into it; and

WHEREAS, the Mayor and Council of the City of Benson have reviewed the terms and conditions of the Agreement and find that entering into it is in the best interests of the City and its residents.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson that the City enter into the Intergovernmental Agreement with the State for the use of the State's AEDs, said Agreement is attached hereto as Exhibit A, and the Mayor is hereby authorized to execute the Agreement.

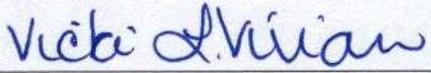
BE IT FURTHER RESOLVED that the City's officers and staff are hereby authorized to take all steps necessary and proper to implement the Agreement and carry out its intents and purposes.

PASSED AND ADOPTED by the Mayor and City Council of the City of Benson, Arizona,
this 9th day of June, 2008.



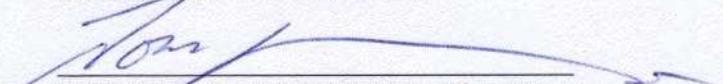
MARK M. FENN, Mayor

ATTEST:



VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:



THOMAS A. BENAVIDEZ, City Attorney

EXHIBIT A

[Intergovernmental Agreement]

ARIZONA DEPARTMENT OF HEALTH SERVICES
Bureau of Emergency Medical Services
150 N 18th Ave, Suite 540
Phoenix, Arizona 85007
(602) 364-3150

EQUIPMENT USER AGREEMENT

AGENCY: Benson Fire Department

1. Parties:

The Director of the Arizona Department of Health Services (ADHS) is authorized, pursuant to A.R.S. ' 36-2218(B) to expend monies for funding local and state emergency medical service systems. The Director is also authorized pursuant to A.R.S. ' 36-2209(B) (4), to enter into contracts with providers of emergency medical services, when necessary, to assure the availability and quality of such services.

The Borrower, Benson Fire Department which provides emergency medical services within the state of Arizona and has demonstrated a need of and use for the equipment described in this Agreement.

2. Purpose: The purpose of this Agreement is to provide The Borrower with use of equipment purchased by ADHS through funds granted to the Bureau through the Rural Access to Emergency Devices Act Grant Program, for the sole and exclusive purpose of assuring and ensuring the availability and provision of quality emergency medical services in The Borrower's service area.

3. Equipment is described as:

Manufacturer: Cardiac Science G3 Plus

Model: Serial Number(s): 4165404; 4166600; 4166641 Value: \$1178.22 ea.

4. Duration: This Agreement will remain in effect for the life of the equipment or for the time that emergency medical services are provided by The Borrower. This Agreement, however, may be terminated upon any one of the occurrences identified in provision number 9.

5. Use of Equipment: ADHS shall provide use of the equipment to The Borrower for the sole purpose of installing this piece of equipment in a place that is easily accessible to the First

Responders. Legal title to the equipment will remain with ADHS. Possession of the equipment will be with The Borrower for the duration of this Agreement unless the Agreement is terminated prior to that time. The Borrower agrees to supervise the use of the equipment and to limit its use to only those persons who have been appropriately trained and adequately instructed in its use pursuant to A.R.S. Title 36, Chapter 21.1, Article 3. The Borrower shall not permit the use of the equipment in a negligent or improper manner or in violation of any statute or rule. The Borrower shall not modify the equipment in any way nor shall The Borrower allow the equipment to be used for purposes other than those intended by this Agreement.

6. Medical Direction: The Borrower shall enter into an agreement with a physician who shall oversee all aspects of public access to defibrillation as required pursuant to A.R.S. ' 36-2262. The Borrower will notify the physician of changes in trained responders as they occur, and provide an updated list of trained responders to the BEMS annually, or as requested by the BEMS. The Borrower will have 4-6 trained responders at all times.

7. Repair and Maintenance: The Borrower shall keep the equipment in good working order, good condition and repair. All repair of parts or equipment shall be at the expense of The Borrower. If broken, the equipment must be repaired to working condition within twenty-four (24) hours of its breakage, insofar as is objectively possible. The Borrower shall also be responsible to pay for all expenses of maintenance in connection with the use and operation of the equipment during the term of this agreement.

8. Indemnification: The Borrower shall indemnify, defend, and save harmless ADHS and the State, its agents, officers and employees, from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorneys' fees and/or litigation expenses, which may be brought or made against or incurred by the State on account of loss, of or damage to, any property or for injuries to, or any death of, any person, caused by, arising out of, or contributed to, in whole or in part, by reasons of any alleged act, omission, professional error, fault, mistake, or negligence of The Borrower's employees, agents, or representatives in connection with, or incident to, the performance of this agreement, or arising out of Workmen's Compensation claims, Unemployment Compensation claims, or Unemployment Disability Compensation claims of employees of The Borrower and/or its subcontractors or claims under similar such laws or obligations. The Borrower's obligation under this section shall not extend to any liability caused by the sole negligence of ADHS, the State or its employees.

9. Return of Equipment: The Borrower agrees to return the equipment upon the occurrence of any of the occurrences listed below:

- a. If the equipment is abused or is not repaired within an objectively reasonable time;

- b. In cases where The Borrower's company is sold or becomes insolvent or ceases to provide emergency medical services;
- c. If the equipment is no longer needed;
- d. If demand is made by ADHS in writing giving The Borrower 30 days notice to return the equipment;
- f. If ADHS has reasonable cause to believe that The Borrower has failed to comply with any term or condition of this Agreement and notifies The Borrower of such failure in writing. The Borrower will return the equipment to ADHS within 30 days of such notice.

10. The Borrower shall return the equipment in the same condition as when The Borrower received it, less reasonable wear and tear. The Borrower will return the equipment to ADHS at a location mutually agreed upon by the parties. If the parties cannot mutually agree upon a location for return, The Borrower will make the equipment available at its place of business and ADHS will arrange to pick the equipment up. Should The Borrower fail to comply with this provision, ADHS may file legal action for the return of the equipment and The Borrower agrees to pay ADHS' attorney fees and costs for that action.

11. **Required Reports:** As part of the consideration given by The Borrower, The Borrower agrees to maintain in-house patient encounter forms or equivalent data points for each emergency response. The Borrower agrees to notify Saver Heart Center at the University of Arizona (520) 626-4883 upon receiving the AED so they may be included in the sites inclusion and evaluation process, The Borrower also agrees to follow all requests from Saver Heart related to the evaluation process and re-certification process.

12. **Termination:** This Agreement is subject to A.R.S. ' 38-511 and may be terminated by either party upon 30 days notice in writing.

13. **Ownership:** Ownership of this equipment will, at all times, remain with ADHS. The Borrower understands that he has no right to sell or encumber this equipment and agrees not to sell or encumber it.

14. **Disputes:** In the event of a dispute, the parties agree to use arbitration to the extent required by A.R.S. ' 12-1518.

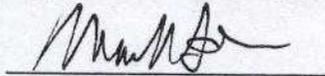
15. **Choice of Law:** This Agreement shall be governed by and construed under the laws of the State of Arizona.

16. **Inspection:** ADHS representatives may, at any reasonable time during the term of this contract, be entitled to inspect the equipment and to review the records and maintenance logs pertaining to the equipment.

17. **Discrimination:** The Borrower shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1975, and State Executive Order No. 75-5, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Borrower shall comply with Section 503 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap. The Borrower shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in delivering Agreement services.

18. **Contract Amendment:** All amendments to this Agreement will only be effective if in writing and signed by all parties.

Signature of Authorized Individuals:



Borrower Signature

Terry Mullins

**Bureau Chief
Bureau of Emergency Medical Services
Arizona Department of Health Services**

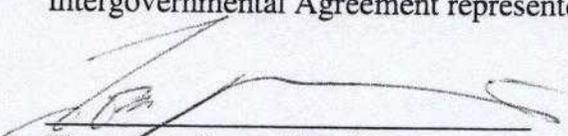
Mark M. Fenn, Mayor

Borrower Title

Date: June 10, 2008

Date: _____

The foregoing Intergovernmental Agreement has been reviewed, pursuant to A.R.S. §11-952 (D), by the undersigned, who have determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to those parties to the Intergovernmental Agreement represented by the undersigned.



Thomas A. Benavidez, Esq.
Attorney, City of Benson

Attorney, AZ Dept. of Health Services.