

DEC 13 2012

**PHILIPS HEALTHCARE
SERVICE AGREEMENT TERMS AND CONDITIONS**

Philips Healthcare (f/k/a Philips Medical Systems North America Company), a Division of Philips Electronics North America Corporation ("Philips") will perform the services ("Services") listed below and any exhibits ("Exhibits") attached to it (together, the "Agreement") for the City of Chandler, an Arizona municipal corporation ("Customer") under the following terms and conditions:

1. **SERVICE.** Unless otherwise set forth in the Exhibits, Philips will provide Customer the Services on the equipment identified in Exhibit A ("Equipment"), at the location described ("Equipment Site"), and for the prices set forth in Exhibit A of this Agreement, including:
 - a. Equipment quality performance assurance service as scheduled by Philips to include a general system inspection and review of system operation, calibrating the system as necessary, system lubrication and filter replacement or cleaning, completing minor operational and reliability field engineering change notices or updates and other remedial maintenance of a non-emergency nature. Philips will provide such planned maintenance during the Service Coverage hours (as defined in paragraph 3 below) at a time that is mutually agreed upon; and
 - b. Repair service, due to Equipment malfunction, as required. Repair service includes the cost of Philips replacement parts as required on an exchange (refurbished) or new part basis and labor to install Philips replacement parts. Replaced parts become Philips' property and may be promptly removed by Philips from the Equipment Site. The prices set forth in this Agreement are subject to change if (i) the Equipment is upgraded or reconfigured, or (ii) cryogenics are included in this Agreement and Philips cost of cryogenics is increased by fifty percent or more during the term of this Agreement.

2. **EXCLUSIONS.** The Services do not include:
 - a. servicing or replacing components of the Equipment other than those listed in Exhibit A.
 - b. providing any service or parts specifically excluded under this Agreement;
 - c. providing or paying the cost of any rigging, facility, structural alteration, or accessory incident to the Services or Equipment;
 - d. servicing the Equipment if the Equipment Site or Equipment is contaminated with blood or other potentially infectious substances;
 - e. any service necessary due to:
 - (1) a design, specification or instruction provided by Customer or Customer representative;
 - (2) the failure of anyone other than Philips' subcontractor or Philips to comply with Philips' written instructions or recommendations;
 - (3) any combining of the Equipment with a product or software of other manufacturers other than those recommended by Philips;
 - (4) any alteration or improper storage, handling, use or maintenance of the Equipment by anyone other than Philips' subcontractor or Philips;
 - (5) damage caused by an external source, regardless of nature;
 - (6) any removal or relocation of the Equipment; or
 - (7) neglect or misuse of the Equipment;
 - f. any cost of materials, supplies, parts or labor supplied by any party other than Philips or Philips' subcontractors;
 - g. unless specifically included in this Agreement, the cost of consumable materials, including but not limited to cushions, knee supports, pads, magnetic media, cryogenics, PET calibration sources, film, batteries or other supply items;
 - h. the cost of factory reconditioning;
 - i. providing software updates, back-up copies of software, or the programming of custom code;
 - j. unless specifically included in this Agreement, maintenance or repair, including the

cost thereof, of third-party products including but not limited to HVAC systems and chiller systems;
or

k. unless specifically included in this Agreement, the cost of nuclear camera detector crystals, surface coils, flat panel detectors, magnet replacement, magnet refrigeration system (coldhead, compressor), chiller, power conditioners, power filters, surge suppressors, uninterruptible power supplies and evacuated devices such as x-ray tubes, image intensifier tubes, TV camera pick-up tubes, photo multiplier tubes, and monitors.

3. COVERAGE. Unless otherwise set forth in the Exhibits, Philips will provide Customer the Services Mondays through Fridays, 8:00 AM to 5:00 PM Customer local time, excluding Philips observed holidays ("Service Coverage"). Unless otherwise set forth in the Exhibits, travel necessary to perform the Services during the Service Coverage hours is included. Subject to the availability of personnel and repair parts, Philips will provide, at Customer request and additional expense, service relating to certain excluded items (invoiced at Philips' then-current standard rates for material and labor) or service outside the Service Coverage hours (invoiced at Philips applicable rates for out-of-hours service of this type in effect for service contract customers with this Equipment, including round trip travel time). Customer will be charged a minimum of two hours on-site time plus applicable travel charges per service visit. Other travel expenses and overnight living expenses will be charged at actual cost in accordance with Philips standards for business expense reimbursement of Philips' employees.

Philips Technology Updates option ("PTU option") is a purchasable option available only for certain Equipment identified by Philips. PTU option coverage may be purchased as software only, hardware only or a combination of software and hardware. If the PTU option is available for the Equipment and purchased under this Agreement, then Philips will update the Equipment software and hardware as follows:

a. For Equipment software updates, Philips will provide the latest available updates, if any and when available and approved by Philips, to the Equipment operating system software, basic application software and software options purchased with the Equipment or purchased separately from Philips for the Equipment. This paragraph 3(a) does not apply if the PTU option is for hardware only.

b. For Equipment hardware updates, Philips will provide the latest available update, if any, to the Equipment hardware component(s) expressly described on the above pages of this Agreement under the PTU option. Philips will provide such hardware update at the time and quantity as expressly described on the above pages of this Agreement under the PTU option. In no case will Philips obligation under any Equipment hardware update provided under this Agreement exceed the greater of \$5,000 or the amount expressly described on the above pages of this Agreement under the PTU option. This paragraph 3(b) does not apply if the PTU option is for software only.

c. Customer acknowledges and agrees that such updates to the Equipment software and hardware are premised on Customer's agreement that all updates furnished pursuant to this Agreement are only available for the Equipment at the Equipment Site. Such updates do not include functionality, applications, options or the like that were not purchased with the Equipment, including but not limited to virus protection software. Customer may not resell, transfer or assign the right to such updates to any third party. All updates to the Equipment software and hardware provided under this Agreement are subject to the terms and conditions of this Agreement and any licensing terms and conditions included in the purchase of the Equipment from Philips.

d. If this Agreement is terminated due to the fault of Customer or Customer defaults under this Agreement after any updates to the Equipment software or hardware are provided by Philips, then Customer will pay Philips the list price of the provided updates within thirty days of such termination or default.

- 4. CUSTOMER RESPONSIBILITIES.** During the term of this Agreement, Customer will:
- a. assure that the Equipment Site is maintained in a clean and sanitary condition and that the Equipment is cleaned and decontaminated after contact with blood or other potentially infectious material;
 - b. dispose of any hazardous or biological waste generated as a result of Philips servicing the Equipment;
 - ~~c. maintain the Equipment Site and environment (including temperature and humidity control, incoming power quality, incoming water quality, and fire protection system) in a condition suitable for operation of the Equipment;~~
 - d. operate the Equipment in accordance with the published manufacturer's operating instructions;
 - e. make normal operator adjustments to the Equipment as specified in the published manufacturer's operating instructions;
 - f. provide Philips a secure location to store a Philips remote services ("PRS") router (or a Customer owned router acceptable to Philips) for connection to the Equipment and Customer network; provide Philips appropriate access to the PRS router to enable Philips to access the Equipment remotely; provide Philips with a dedicated broadband Internet access node, including but not limited to public and private interface access, suitable to establish a successful connection to the Equipment through the Philips PRS and Customer's network for Philips use in remote servicing of the Equipment, remote assistance to personnel that operate the Equipment, updating the Equipment software, transmitting automated status notification from the Equipment and regular uploading of Equipment data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into new services). Unless Philips determines in its sole discretion that the Equipment cannot be connected to the PRS, then Customer's failure to provide the access described in this paragraph 4(f) will constitute Customer's waiver of its rights to Services under this Agreement and any uptime guarantee provided with the Equipment or in connection with this Agreement, if any; and
 - g. provide Philips service personnel full and free access to the Equipment at the scheduled service time. Customer's failure to provide such access at the scheduled time constitutes Customer's waiver of the scheduled planned maintenance service and voids Agreement coverage of Equipment malfunctions until such time as planned maintenance service is completed. Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the Equipment.

5. PAYMENT. All payments under this Agreement are due thirty (30) days from the date of Philips' invoice until the Agreement amount and all applicable taxes and interest are paid in full. Customer will pay interest on any amount not paid when due at the lesser of 1.5% interest per month or the maximum rate permitted by applicable law.

6. EXCUSABLE DELAYS. Philips is excused from performing under this Agreement when Philips' delay or failure to perform is caused by events beyond Philips reasonable control including, but not limited to, acts of God, acts of third parties, acts of the other party, acts of any civil or military authority, fire, floods, war, terrorism, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities, or Equipment being contaminated with blood or other potentially infectious material.

7. TERM; TERMINATION. Except as otherwise provided in this paragraph 7, this Agreement is noncancelable by Customer and will remain in effect for the term specified in this Agreement. Customer may cancel this Agreement upon 60 days written notice to Philips (i) representing that the Equipment is being permanently removed from the Equipment Site and

that the Equipment is not being used in any other Customer or third party site, provided that if Customer transfers ownership of the Equipment as part of the transfer of Customer's business or a substantial amount of its assets to a third party without assignment of this Agreement to such third party (as described in paragraph 16), then Customer will pay a cancellation fee equal to thirty percent of the remaining balance of this Agreement; or (ii) specifically describing a material breach or default of the Agreement by Philips, provided that Philips may avoid such cancellation by curing the condition of breach or default within such 60 day notice period. Customer's failure to pay any amount due under this Agreement within 30 days of when payment is due constitutes a default of this Agreement and all other agreements between Customer and Philips. In such an event, Philips may, at its option, (i) withhold performance under this Agreement and any or all of the other agreements until a reasonable time after all defaults have been cured, (ii) declare all sums due and to become due to be immediately due and payable under this Agreement and any or all of the other agreements, (iii) commence collection activities for all sums due or to become due hereunder, including, but not limited to costs and expenses of collection, and reasonable attorney's fees, (iv) terminate this Agreement with 10 days notice to Customer, and (v) pursue any other remedies permitted by law. If Philips determines that its ability to provide the Service Coverage is hindered due to the unavailability of parts or trained personnel, then Philips may terminate this Agreement upon notice to the Customer and provide Customer with a refund of any Customer pre-payments for periods of Service Coverage terminated by Philips.

8. WARRANTY DISCLAIMER. Philips' full contractual service obligations to Customer are described in this Agreement. Philips provides no warranties under this Agreement. All service and parts to support service under this Agreement are provided AS IS. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO ANYTHING PROVIDED BY PHILIPS' SUBCONTRACTOR OR PHILIPS.

9. LIMITATIONS OF REMEDIES AND DAMAGES. Philips' total liability, if any, and Customer's exclusive remedy with respect to the Services and Philips' performance hereunder is limited to an amount not to exceed the price stated herein for service that is the basis for the claim. IN NO EVENT WILL PHILIPS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR THE COST OF SUBSTITUTE PARTS OR SERVICES, WHETHER ARISING FROM BREACH OF THE TERMS IN THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT. PHILIPS WILL HAVE NO LIABILITY FOR ANY ASSISTANCE PHILIPS PROVIDES THAT IS NOT REQUIRED UNDER THIS AGREEMENT.

10. PROPRIETARY SERVICE MATERIALS. In connection with the installation, configuration, maintenance, repair and de-installation of the Equipment, Philips might deliver or transmit to the Equipment Site, along with the Equipment or separately, and store at the Equipment Site, attach to or install on the Equipment, and use certain proprietary service materials (including software and written documentation) that have not been purchased by or licensed to Customer. Customer hereby consents to this delivery, transmission, storage, attachment, installation and use, and to the presence of Philips' locked cabinet or box in the Equipment Site for storage of this property, and to Philips' removal of all or any part of this property at any time, all without charge to Philips. The presence of this property within the Equipment Site will not give Customer any right or title to this property or any license or other right to access, use or decompile this property. Any access to or use of this property and any decompilation of this property by anyone other than Philips' personnel is prohibited. Customer agrees that it will use all reasonable efforts to protect this property against damage or loss and to prevent any access to or use or decompilation of this property contrary to this prohibition. Customer also agrees to immediately

report to Philips any violation of this provision known by Customer.

11. THIRD PARTY MANAGEMENT. If Customer has contracted with a third party service management organization, asset management company, maintenance management company, technology management company, maintenance insurance organization or the like ("Third Party Organization") for purposes of centralized billing and management of services provided to Customer, at Customer's written request, Philips will route invoices for payment of services rendered by Philips to such Third Party Organization and accept payment from them on Customer's behalf. Notwithstanding the above, Customer agrees that the services provided by Philips are subject solely to the terms and conditions set forth in this Agreement, and that Customer guarantees the payment of all monies due or that may become due under this Agreement in spite of any collateral arrangements Customer may have with such Third Party Organization or any payments Customer have made to the Third Party Organization. Philips has no contractual relationship for the Services rendered to Customer except as set forth herein. To the extent that the parts and services Philips provides are not covered by Customer's arrangement with such Third Party Organization, Customer agrees to promptly pay for such parts and services on demand.

12. TAXES. Customer will not be obligated to pay any federal, state or local tax imposed upon or measured by Philips' net income. Any other applicable tax will be invoiced to and payable by Customer, along with the Agreement Price in accordance with the payment terms set forth in this Agreement, unless Philips receives a tax exemption certificate from Customer that is acceptable to the taxing authorities.

13. INDEPENDENT CONTRACTOR. Philips is Customer's independent contractor. Philips' employees are under Philips' exclusive direction and control. Employees of Philips' subcontractors are under such subcontractors' exclusive direction and control. Nothing in this Agreement will be construed to designate Philips or any of Philips' employees or Philips' subcontractors or any of their employees as Customer employees, agents, joint venturers or partners. Customer will indemnify, defend, and hold harmless Philips and its officers, directors, and employees from any claims for loss, cost, damages, expense or liability (including reasonable attorneys fees) to the extent such claims result from Customer's or Customer's employees' act or omissions related to the services to be performed by Customer's employees under this Agreement.

14. RECORD RETENTION AND ACCESS. If Section 1861 (v) (1) (I) of the Social Security Act applies to this Agreement, Subsections (i) and (ii) of that Section are made a part of this Agreement. In such an event, Philips agrees to retain and make available, and to insert the requisite clause in each applicable subcontract requiring Philips subcontractor to retain and make available, the contract(s), book(s), document(s), and record(s) to the person(s), upon the request(s) for the period(s) of time required by these Subsections.

15. PRIVACY. In the course of providing the Services to Customer, it is necessary for Philips to have access to, view and/or download computer files from the Equipment that might contain Personal Data. Personal Data includes information relating to an individual, from which that individual can be directly or indirectly identified. Personal Data can include both personal health information (e.g., images, heart monitor data, medical record number) and non-health information (e.g., date of birth, gender). Philips will process Personal Data only to the extent necessary to fulfill its Service obligations under this Agreement.

16. SUBCONTRACTS AND ASSIGNMENTS. Philips may subcontract to service contractors of Philips' choice any of Philips' service obligations to Customer or other activities performed by

Philips under this Agreement. No such subcontract will release Philips from those obligations to Customer. Customer may not assign this Agreement or the responsibility for payments due under it without Philips' prior express written consent, which will not be unreasonably withheld.

17. SURVIVAL, WAIVER, SEVERABILITY, NOTICE, CHOICE OF LAW. Customer's obligation to pay any money due to Philips under this Agreement survives expiration or termination of this Agreement. All of Philips' rights, privileges and remedies with respect to this Agreement will continue in full force and effect after the end of this Agreement. Either party's failure to enforce any provision of this Agreement is not a waiver of that provision or of such party's right to later enforce each and every provision. If any part of this Agreement is found to be invalid, the remaining part will be effective. Notices or other communications will be in writing, and will be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth on the face of this Agreement. The law of the state of Arizona will govern any interpretation of this Agreement and dispute between Philips and Customer without regard to the principles of choice of law.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, written or oral, regarding its subject matter. No additional terms, conditions, consent, waiver, alteration, or modification will be binding unless in writing and signed by Philips' authorized representative and Customer. Additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and will not apply to the transactions contemplated by this Agreement. No prior proposals, statements, course of dealing, course of performance, usage of trade or industry standard will be part of this Agreement.

19. AUTHORITY TO EXECUTE. In executing this Agreement, the parties hereto acknowledge that they have read each of the terms and conditions hereof on behalf of their respective interests, that they know and understand the same, and that they have signed this Agreement as their own respective free acts and with the express authority to do so.

20. COUNTERPARTS. This Agreement may be executed in two or more counterparts and shall be effective when each party has executed and delivered to the other parties at least one of the counterparts.

IN WITNESS WHEREOF, we have executed this Agreement on the dates below written and hereby swear and affirm that we are duly authorized in accordance with law to execute this Agreement.

(signature blocks on next two pages)

CITY OF CHANDLER, an Arizona
municipal corporation

By: _____
JAY TIBSHRAENY
MAYOR

Date: _____, 2012

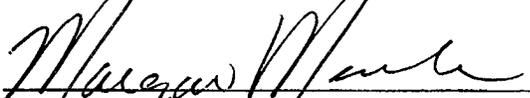
ATTEST

CITY CLERK

APPROVED AS FORM:

CITY ATTORNEY *(Signature)*

PHILLIPS HEALTHCARE, a Division of Phillips
Electronics North America Corporation



(Typed Name)

(Typed Title)

Date: 12/6, 2012

Margaret H. Messelaar
Sr. Manager, Commercial Contracts

Exhibit A
Proposal for Maintenance Agreement for 5 Years



Philips Healthcare

a division of Philips Electronics North America Corporation

PCCI SYSTEMS AGREEMENT QUOTATION - Comprehensive Onsite

Customer: #94253526
 Address: City of Chandler
 Address: 3550 South Dobson Road
 City, State/Zip: Chandler, AZ 35248
 Agreement Contact: Battalion Chief Val Gale Jr.
 Telephone: 480-782-2114/480-748-5881
 Fax: 480-782-2150
 System Contact
 Telephone:
 Field Service Engineer: SW2: Danny Van Gorder
 Equipment Location:
 Department Name:
 Email: Val.Gale@chandleraz.gov

Payment Terms: Net 30
 Agreement Quote Date: 9/21/2012
 Prior Agreement #: Renewal of 40608706
 Agreement Start Date: 12/29/2012
 Agreement End Date: 12/28/2017
 Billing Schedule: Yearly
 Extended Onsite Coverage: Mon-Fri 8am to 5pm
 Multi-Year Option: 14%

Valid for 60 days

Philips Representative:	Tel:	Fax:	Date:	Quote #:
Kelly Carbon	425-482-8534	206-512-2054	9/21/2012	071463-1

Model #	Serial #	Qty	SAP#	Description	Start	End	Annual List \$	Extended Annual List \$
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SO#6101241852/
 Warr#40595361

M3538A	US00322546	15		Defibrillators HeartStart MRx (PA recommended)	12/29/2012	12/28/2017	\$945.00	\$14,175.00
	US00322547							
	US00322548							
	US00322549							
	US00322550							
	US00322551							
	US00322552							
	US00322553							
	US00322554							
	US00322555							
	US00322556							
	US00322557							
	US00322558							
	US00322559							
	US00322560							

Subtotal : \$70,875.00

Extended Travel Charge See Travel Uplifts 35.2 mi No Uplift

Extended Onsite Coverage \$0.00

Model #	Serial #	Qty	SAP#	Description	Start	End	Annual List \$	Extended Annual List \$
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		1		Performance Assurance (applies only to products with (PA) in the description) 1 per unit, per year of agreement	12/29/2012	12/28/2017	\$5,250.00	\$26,250.00
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Subtotal Optional Services Discountable \$26,250.00

Subtotal Optional Services Non-Discountable \$0.00

Subtotal Discountable \$97,125.00

POS Option Discount \$0.00

Multi-Year Option Discount (\$13,697.50)

Net Charge Year 1 \$16,705.50

Net Charge Year 2 \$16,705.50

Net Charge Year 3 \$16,705.50

Net Charge Year 4 \$16,705.50

Net Charge Year 5 \$16,705.50

Quotation Total \$83,527.50

Model #	Serial #	Qty	SAP#	Description	Start	End	Annual List \$	Extended Annual List \$
Prices exclude taxes. Applicable taxes will be added to the invoice. Subject to credit approval.								
<p>IMPORTANT NOTICE: A signed copy of this agreement, for the services and prices quoted herein, is Customer's acceptance that the Terms and Conditions and information in the Exhibit and the Data Sheet attached to this quotation are the sole terms applicable to the services quoted. The acceptance of this quotation is not binding upon Philips until further review by Philips contract administration. The information contained in this document is confidential and is provided to the entity listed as the customer solely in connection with the evaluation of the purchase and sale. This information shall not be disclosed to any other party. The Philips terms and conditions of sale applicable to the service quoted herein are available via http://www.healthcare.philips.com/main/terms_conditions ("Terms and Conditions"). Health Care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including under any federal or state but not limited to 42 CFR 1001.952(h). Philips reserves all rights with regard to this information. Reserved.</p>								
<p>Customer Agreement as Quoted</p> <p>Upon customer signing and an authorized Philips representative accepting, this quotation constitutes a contract and Customer is bound by all terms and conditions hereof.</p> <p>Philips by its acceptance hereof, agrees to provide maintenance services for the equipment listed above in accordance with the following terms set forth herein.</p>								
<p>Authorized Signature _____</p> <p>Printed Name _____</p> <p>Title / Date _____</p> <p>Customer PO # _____</p>				<p>Authorized Signature _____</p> <p>Title / Date _____</p>				
				FOR CREDIT CARD PAYMENT				
				Credit Card Type (circle) AMEX VISA MC Discover				
				Credit Card # _____				
				Expiration Date _____				
				Signature _____				
				Print Name _____				
<p>prepared by: Cheryl Balliro</p> <p>FAX To: (800)947-3299 or Mail Purchase Order & Quote To: Philips Healthcare, Business Center, ms0400, 3000 Minuteman Road, Andover, MA 01810 (800)947-7372 opt 5</p>								



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

33

2. Council Meeting Date:
December 13, 2012

TO: MAYOR & COUNCIL

3. Date Prepared: December 3, 2012

THROUGH: CITY MANAGER

4. Requesting Department: Fire

5. SUBJECT: Multi-year agreement for cardiac monitor maintenance services with Philips Healthcare in an amount not to exceed \$83,528.

6. RECOMMENDATION: Recommend approval of a multi-year agreement for cardiac monitor maintenance services with Philips Healthcare in an amount not to exceed \$83,528.

7. HISTORICAL BACKGROUND/DISCUSSION: The Fire Department currently uses 15 Philips cardiac monitor/defibrillators to provide 12-lead cardiac monitoring and electrical therapy, including end tidal CO2 and blood pressure monitoring capabilities on all of our front line responding Fire apparatus. These monitors were initially purchased in 2007 with a one-year manufacturer's warranty which was followed with a four-year "Gold" level service and repair warranty that will expire on 12/28/2012. The new agreement with Philips Healthcare includes five years of annual service and calibration for \$14,175 per year and five years of performance assurance (on-site repairs, including loaner monitors when needed) for \$5,250 per year. Philips offers a 14% multiyear discount with the five-year agreement that amounts to a discount of \$13,597, bringing the total five-year agreement cost to \$83,528. This agreement mirrors the "Gold" level agreement and is scheduled to begin 12/29/2012 and run to 12/28/2017, which will give the Fire Department uninterrupted service protection through 2017.

8. EVALUATION PROCESS: Because the monitors are proprietary to Philips Healthcare, there are no other sources to provide the cardiac monitor services needed. Philips Healthcare has offered a 14% multi-year discount (\$13, 597) off of the total price of the five-year agreement.

9. FINANCIAL IMPLICATIONS: \$83,528 is available in the FY 2012/13 Fire Department Operating Budget, account 101.2220.5413.0.0.0.

10. PROPOSED MOTION: Move to approve a multi-year agreement for cardiac monitor maintenance services with Philips Healthcare in an amount not to exceed \$83,528.

APPROVALS

11. Requesting Department

Val Gale, Battalion Chief

12. Department Head

Jeff Clark, Fire Chief

13. Procurement Officer

Carolee Stees, CPPB for

14. City Manager

Rich Dlugas

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c. providing or paying the cost of any rigging, facility, structural alteration, or accessory incident to the Services or Equipment;

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e. any service necessary due to:

(1) a design, specification or instruction provided by Customer or Customer representative;

(2) the failure of anyone other than Philips' subcontractor or Philips to comply with

Philips' written instructions or recommendations;

(3) any combining of the Equipment with a product or software of other manufacturers other than those recommended by Philips;

(4) any alteration or improper storage, handling, use or maintenance of the Equipment by anyone other than Philips' subcontractor or Philips;

(5) damage caused by an external source, regardless of nature;

(6) any removal or relocation of the Equipment; or

(7) neglect or misuse of the Equipment;

f. any cost of materials, supplies, parts or labor supplied by any party other than Philips or Philips' subcontractors;

g. unless specifically included in this Agreement, the cost of consumable materials, including but not limited to cushions, knee supports, pads, magnetic media, cryogenics, PET calibration sources, film, batteries or other supply items;

h. the cost of factory reconditioning;

i. providing software updates, back-up copies of software, or the programming of custom code;

j. unless specifically included in this Agreement, maintenance or repair, including the

cost thereof, of third-party products including but not limited to HVAC systems and chiller systems;
or

k. unless specifically included in this Agreement, the cost of nuclear camera detector crystals, surface coils, flat panel detectors, magnet replacement, magnet refrigeration system (coldhead, compressor), chiller, power conditioners, power filters, surge suppressors, uninterruptible power supplies and evacuated devices such as x-ray tubes, image intensifier tubes, TV camera pick-up tubes, photo multiplier tubes, and monitors.

3. COVERAGE. Unless otherwise set forth in the Exhibits, Philips will provide Customer the Services Mondays through Fridays, 8:00 AM to 5:00 PM Customer local time, excluding Philips observed holidays ("Service Coverage"). Unless otherwise set forth in the Exhibits, travel necessary to perform the Services during the Service Coverage hours is included. Subject to the availability of personnel and repair parts, Philips will provide, at Customer request and additional expense, service relating to certain excluded items (invoiced at Philips' then-current standard rates for material and labor) or service outside the Service Coverage hours (invoiced at Philips applicable rates for out-of-hours service of this type in effect for service contract customers with this Equipment, including round trip travel time). Customer will be charged a minimum of two hours on-site time plus applicable travel charges per service visit. Other travel expenses and overnight living expenses will be charged at actual cost in accordance with Philips standards for business expense reimbursement of Philips' employees.

Philips Technology Updates option ("PTU option") is a purchasable option available only for certain Equipment identified by Philips. PTU option coverage may be purchased as software only, hardware only or a combination of software and hardware. If the PTU option is available for the Equipment and purchased under this Agreement, then Philips will update the Equipment software and hardware as follows:

a. For Equipment software updates, Philips will provide the latest available updates, if any and when available and approved by Philips, to the Equipment operating system software, basic application software and software options purchased with the Equipment or purchased separately from Philips for the Equipment. This paragraph 3(a) does not apply if the PTU option is for hardware only.

b. For Equipment hardware updates, Philips will provide the latest available update, if any, to the Equipment hardware component(s) expressly described on the above pages of this Agreement under the PTU option. Philips will provide such hardware update at the time and quantity as expressly described on the above pages of this Agreement under the PTU option. In no case will Philips obligation under any Equipment hardware update provided under this Agreement exceed the greater of \$5,000 or the amount expressly described on the above pages of this Agreement under the PTU option. This paragraph 3(b) does not apply if the PTU option is for software only.

c. Customer acknowledges and agrees that such updates to the Equipment software and hardware are premised on Customer's agreement that all updates furnished pursuant to this Agreement are only available for the Equipment at the Equipment Site. Such updates do not include functionality, applications, options or the like that were not purchased with the Equipment, including but not limited to virus protection software. Customer may not resell, transfer or assign the right to such updates to any third party. All updates to the Equipment software and hardware provided under this Agreement are subject to the terms and conditions of this Agreement and any licensing terms and conditions included in the purchase of the Equipment from Philips.

d. If this Agreement is terminated due to the fault of Customer or Customer defaults under this Agreement after any updates to the Equipment software or hardware are provided by Philips, then Customer will pay Philips the list price of the provided updates within thirty days of such termination or default.

- 4. CUSTOMER RESPONSIBILITIES.** During the term of this Agreement, Customer will:
- a. assure that the Equipment Site is maintained in a clean and sanitary condition and that the Equipment is cleaned and decontaminated after contact with blood or other potentially infectious material;
 - b. dispose of any hazardous or biological waste generated as a result of Philips servicing the Equipment;
 - c. maintain the Equipment Site and environment (including temperature and humidity control, incoming power quality, incoming water quality, and fire protection system) in a condition suitable for operation of the Equipment;
 - d. operate the Equipment in accordance with the published manufacturer's operating instructions;
 - e. make normal operator adjustments to the Equipment as specified in the published manufacturer's operating instructions;
 - f. provide Philips a secure location to store a Philips remote services ("PRS") router (or a Customer owned router acceptable to Philips) for connection to the Equipment and Customer network; provide Philips appropriate access to the PRS router to enable Philips to access the Equipment remotely; provide Philips with a dedicated broadband Internet access node, including but not limited to public and private interface access, suitable to establish a successful connection to the Equipment through the Philips PRS and Customer's network for Philips use in remote servicing of the Equipment, remote assistance to personnel that operate the Equipment, updating the Equipment software, transmitting automated status notification from the Equipment and regular uploading of Equipment data files (such as but not limited to error logs and utilization data for improvement of Philips products and services and aggregation into new services). Unless Philips determines in its sole discretion that the Equipment cannot be connected to the PRS, then Customer's failure to provide the access described in this paragraph 4(f) will constitute Customer's waiver of its rights to Services under this Agreement and any uptime guarantee provided with the Equipment or in connection with this Agreement, if any; and
 - g. provide Philips service personnel full and free access to the Equipment at the scheduled service time. Customer's failure to provide such access at the scheduled time constitutes Customer's waiver of the scheduled planned maintenance service and voids Agreement coverage of Equipment malfunctions until such time as planned maintenance service is completed. Customer agrees to pay Philips at the prevailing demand service rates for all time spent by Philips service personnel waiting for access to the Equipment.

5. PAYMENT. All payments under this Agreement are due thirty (30) days from the date of Philips' invoice until the Agreement amount and all applicable taxes and interest are paid in full. Customer will pay interest on any amount not paid when due at the lesser of 1.5% interest per month or the maximum rate permitted by applicable law.

6. EXCUSABLE DELAYS. Philips is excused from performing under this Agreement when Philips' delay or failure to perform is caused by events beyond Philips reasonable control including, but not limited to, acts of God, acts of third parties, acts of the other party, acts of any civil or military authority, fire, floods, war, terrorism, embargoes, labor disputes, acts of sabotage, riots, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request, shortage of labor, materials or manufacturing facilities, or Equipment being contaminated with blood or other potentially infectious material.

7. TERM; TERMINATION. Except as otherwise provided in this paragraph 7, this Agreement is noncancelable by Customer and will remain in effect for the term specified in this Agreement. Customer may cancel this Agreement upon 60 days written notice to Philips (i) representing that the Equipment is being permanently removed from the Equipment Site and

that the Equipment is not being used in any other Customer or third party site, provided that if Customer transfers ownership of the Equipment as part of the transfer of Customer's business or a substantial amount of its assets to a third party without assignment of this Agreement to such third party (as described in paragraph 16), then Customer will pay a cancellation fee equal to thirty percent of the remaining balance of this Agreement; or (ii) specifically describing a material breach or default of the Agreement by Philips, provided that Philips may avoid such cancellation by curing the condition of breach or default within such 60 day notice period. Customer's failure to pay any amount due under this Agreement within 30 days of when payment is due constitutes a default of this Agreement and all other agreements between Customer and Philips. In such an event, Philips may, at its option, (i) withhold performance under this Agreement and any or all of the other agreements until a reasonable time after all defaults have been cured, (ii) declare all sums due and to become due to be immediately due and payable under this Agreement and any or all of the other agreements, (iii) commence collection activities for all sums due or to become due hereunder, including, but not limited to costs and expenses of collection, and reasonable attorney's fees, (iv) terminate this Agreement with 10 days notice to Customer, and (v) pursue any other remedies permitted by law. If Philips determines that its ability to provide the Service Coverage is hindered due to the unavailability of parts or trained personnel, then Philips may terminate this Agreement upon notice to the Customer and provide Customer with a refund of any Customer pre-payments for periods of Service Coverage terminated by Philips.

8. WARRANTY DISCLAIMER. Philips' full contractual service obligations to Customer are described in this Agreement. Philips provides no warranties under this Agreement. All service and parts to support service under this Agreement are provided AS IS. NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES TO ANYTHING PROVIDED BY PHILIPS' SUBCONTRACTOR OR PHILIPS.

9. LIMITATIONS OF REMEDIES AND DAMAGES. Philips' total liability, if any, and Customer's exclusive remedy with respect to the Services and Philips' performance hereunder is limited to an amount not to exceed the price stated herein for service that is the basis for the claim. IN NO EVENT WILL PHILIPS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, LOST REVENUES OR PROFITS, OR THE COST OF SUBSTITUTE PARTS OR SERVICES, WHETHER ARISING FROM BREACH OF THE TERMS IN THIS AGREEMENT, BREACH OF WARRANTY, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHER TORT. PHILIPS WILL HAVE NO LIABILITY FOR ANY ASSISTANCE PHILIPS PROVIDES THAT IS NOT REQUIRED UNDER THIS AGREEMENT.

10. PROPRIETARY SERVICE MATERIALS. In connection with the installation, configuration, maintenance, repair and de-installation of the Equipment, Philips might deliver or transmit to the Equipment Site, along with the Equipment or separately, and store at the Equipment Site, attach to or install on the Equipment, and use certain proprietary service materials (including software and written documentation) that have not been purchased by or licensed to Customer. Customer hereby consents to this delivery, transmission, storage, attachment, installation and use, and to the presence of Philips' locked cabinet or box in the Equipment Site for storage of this property, and to Philips' removal of all or any part of this property at any time, all without charge to Philips. The presence of this property within the Equipment Site will not give Customer any right or title to this property or any license or other right to access, use or decompile this property. Any access to or use of this property and any decompilation of this property by anyone other than Philips' personnel is prohibited. Customer agrees that it will use all reasonable efforts to protect this property against damage or loss and to prevent any access to or use or decompilation of this property contrary to this prohibition. Customer also agrees to immediately

report to Philips any violation of this provision known by Customer.

11. THIRD PARTY MANAGEMENT. If Customer has contracted with a third party service management organization, asset management company, maintenance management company, technology management company, maintenance insurance organization or the like ("Third Party Organization") for purposes of centralized billing and management of services provided to Customer, at Customer's written request, Philips will route invoices for payment of services rendered by Philips to such Third Party Organization and accept payment from them on Customer's behalf. Notwithstanding the above, Customer agrees that the services provided by Philips are subject solely to the terms and conditions set forth in this Agreement, and that Customer guaranties the payment of all monies due or that may become due under this Agreement in spite of any collateral arrangements Customer may have with such Third Party Organization or any payments Customer have made to the Third Party Organization. Philips has no contractual relationship for the Services rendered to Customer except as set forth herein. To the extent that the parts and services Philips provides are not covered by Customer's arrangement with such Third Party Organization, Customer agrees to promptly pay for such parts and services on demand.

12. TAXES. Customer will not be obligated to pay any federal, state or local tax imposed upon or measured by Philips' net income. Any other applicable tax will be invoiced to and payable by Customer, along with the Agreement Price in accordance with the payment terms set forth in this Agreement, unless Philips receives a tax exemption certificate from Customer that is acceptable to the taxing authorities.

13. INDEPENDENT CONTRACTOR. Philips is Customer's independent contractor. Philips' employees are under Philips' exclusive direction and control. Employees of Philips' subcontractors are under such subcontractors' exclusive direction and control. Nothing in this Agreement will be construed to designate Philips or any of Philips' employees or Philips' subcontractors or any of their employees as Customer employees, agents, joint venturers or partners. Customer will indemnify, defend, and hold harmless Philips and its officers, directors, and employees from any claims for loss, cost, damages, expense or liability (including reasonable attorneys fees) to the extent such claims result from Customer's or Customer's employees' act or omissions related to the services to be performed by Customer's employees under this Agreement.

14. RECORD RETENTION AND ACCESS. If Section 1861 (v) (1) (I) of the Social Security Act applies to this Agreement, Subsections (i) and (ii) of that Section are made a part of this Agreement. In such an event, Philips agrees to retain and make available, and to insert the requisite clause in each applicable subcontract requiring Philips subcontractor to retain and make available, the contract(s), book(s), document(s), and record(s) to the person(s), upon the request(s) for the period(s) of time required by these Subsections.

15. PRIVACY. In the course of providing the Services to Customer, it is necessary for Philips to have access to, view and/or download computer files from the Equipment that might contain Personal Data. Personal Data includes information relating to an individual, from which that individual can be directly or indirectly identified. Personal Data can include both personal health information (e.g., images, heart monitor data, medical record number) and non-health information (e.g., date of birth, gender). Philips will process Personal Data only to the extent necessary to fulfill its Service obligations under this Agreement.

16. SUBCONTRACTS AND ASSIGNMENTS. Philips may subcontract to service contractors of Philips' choice any of Philips' service obligations to Customer or other activities performed by

Philips under this Agreement. No such subcontract will release Philips from those obligations to Customer. Customer may not assign this Agreement or the responsibility for payments due under it without Philips' prior express written consent, which will not be unreasonably withheld.

17. SURVIVAL, WAIVER, SEVERABILITY, NOTICE, CHOICE OF LAW. Customer's obligation to pay any money due to Philips under this Agreement survives expiration or termination of this Agreement. All of Philips' rights, privileges and remedies with respect to this Agreement will continue in full force and effect after the end of this Agreement. Either party's failure to enforce any provision of this Agreement is not a waiver of that provision or of such party's right to later enforce each and every provision. If any part of this Agreement is found to be invalid, the remaining part will be effective. Notices or other communications will be in writing, and will be deemed served if delivered personally, or if sent by facsimile transmission, by overnight mail or courier, or by certified mail, return receipt requested and addressed to the party at the address set forth on the face of this Agreement. The law of the state of New York will govern any interpretation of this Agreement and dispute between Philips and Customer without regard to the principles of choice of law.

18. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the parties and supersedes all other agreements, written or oral, regarding its subject matter. No additional terms, conditions, consent, waiver, alteration, or modification will be binding unless in writing and signed by Philips' authorized representative and Customer. Additional or different terms and conditions, whether stated in a purchase order or other document issued by Customer, are specifically rejected and will not apply to the transactions contemplated by this Agreement. No prior proposals, statements, course of dealing, course of performance, usage of trade or industry standard will be part of this Agreement.

19. AUTHORITY TO EXECUTE. In executing this Agreement, the parties hereto acknowledge that they have read each of the terms and conditions hereof on behalf of their respective interests, that they know and understand the same, and that they have signed this Agreement as their own respective free acts and with the express authority to do so.

IN WITNESS WHEREOF, we have executed this Agreement on the dates below written and hereby swear and affirm that we are duly authorized in accordance with law to execute this Agreement.

CITY OF CHANDLER, an Arizona
municipal corporation

PHILLIPS HEALTHCARE, a Division of
Phillips Electronics North America
Corporation

By: _____
JAY TIBSHRAENY
MAYOR

(Typed Name)
(Typed Title)

Date: _____, 2012

Date: _____, 2012

ATTEST

CITY CLERK

Customer Care Solution Center



Philips Healthcare

a division of Philips Electronics North America Corporation

PCCI SYSTEMS AGREEMENT QUOTATION - Comprehensive Onsite

Customer: #94253526
 Address: City of Chandler
 Address: 3550 South Dobson Road
 City,State/Zip: Chandler, AZ 85248
 Agreement Contact : Battalion Chief Val Gale Jr.
 Telephone: 480-782-2114/480-748-5881
 Fax: 480-782-2150

System Contact:
 Telephone:
 Field Service Engineer: SW2: Danny Van Gorder
 Equipment Location:
 Department Name:

Email: Val.Gale@chandleraz.gov

Payment Terms: Net 30
 Agreement Quote Date: 9/21/2012
 Prior Agreement #: Renewal of 40608706
 Agreement Start Date: 12/29/2012
 Agreement End Date: 12/28/2017
 Billing Schedule: Yearly
 Extended Onsite Coverage: Mon-Fri 8am to 5pm

Multi -Year Option: 14%

Valid for 60 days

Philips Representative:	Tel:	Fax:	Date:	Quote #:
Kelly Carbon	425-482-8534	206-512-2054	9/21/2012	071463-1

Model #	Serial #	Qty	SAP#	Description	Start	End	Annual List \$	Extended Annual List \$
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SO#6101241652/
Warr#40595361

Model #	Serial #	Qty	SAP#	Description	Start	End	Annual List \$	Extended Annual List \$
M3536A	US00322546	15		Defibrillators HeartStart MRx (PA recommended)	12/29/2012	12/28/2017	\$945.00	\$14,175.00
	US00322547							
	US00322548							
	US00322549							
	US00322550							
	US00322551							
	US00322552							
	US00322553							
	US00322554							
	US00322555							
	US00322556							
	US00322557							
	US00322558							
	US00322559							
	US00322560							

Subtotal :								\$70,875.00
Extended Travel Charge	See Travel Uplifts			35.2 mi				No Uplift
Extended Onsite Coverage								\$0.00

Model #	Serial #	Qty	SAP#	Description	Start	End	Annual List \$	Extended Annual List \$
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		1		Performance Assurance (applies only to products with (PA) in the description) 1 per unit, per year of agreement	12/29/2012	12/28/2017	\$5,250.00	\$26,250.00
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Subtotal Optional Services Discountable **\$26,250.00**

Subtotal Optional Services Non-Discountable **\$0.00**

Subtotal Discountable **\$97,125.00**

POS Option Discount \$0.00

Multi-Year Option Discount (\$13,597.50)

Net Charge Year 1 \$16,705.50

Net Charge Year 2 \$16,705.50

Net Charge Year 3 \$16,705.50

Net Charge Year 4 \$16,705.50

Net Charge Year 5 \$16,705.50

Quotation Total **\$83,527.50**

Model #	Serial #	Qty	SAP#	Description	Start	End	Annual List \$	Extended Annual List \$
Prices exclude taxes. Applicable taxes will be added to the invoice. Subject to credit approval.								
<p>IMPORTANT NOTICE: A signed copy of this agreement, for the services and prices quoted herein, is Customers acceptance that the Terms and Conditions and information in the Exhibit and the Data Sheet attached to this quotation are the sole terms applicable to the services quoted. The acceptance of this quotation is not binding upon Philips until further review by Philips contract administration. The information contained in this document is confidential and is provided to the entity listed as the customer solely in connection with the evaluation of the purchase and sale. This information shall not be disclosed to any other party. The Philips terms and conditions of sale applicable to the service quoted herein are available via http://www.healthcare.philips.com/main/terms_conditions ("Terms and Conditions"). Health Care providers are reminded that if the transactions herein include or involve a loan or discount (including a rebate or other price reduction), they must fully and accurately report such loan or discount on cost reports or other applicable reports or claims for payment submitted health care program, including but not limited to Medicare and Medicaid, such as may be required by state or federal law, including under any federal or state but not limited to 42 CFR 1001.952(h). Philips reserves all rights with regard to this information. Reserved.</p>								
<p>Customer Agreement as Quoted</p> <p>Upon customer signing and an authorized Philips representative accepting, this quotation constitutes a contract and Customer is bound by all terms and conditions hereof.</p> <p>Philips by its acceptance hereof, agrees to provide maintenance services for the equipment listed above in accordance with the following terms set forth herein.</p>								
<p>Authorized Signature _____</p> <p>Printed Name _____</p> <p>Title / Date _____</p> <p>Customer PO # _____</p>				<p>Authorized Signature _____</p> <p>Title / Date _____</p>				
				FOR CREDIT CARD PAYMENT				
				<p>Credit Card Type (circle) AMEX VISA MC Discover</p> <p>Credit Card # _____</p> <p>Expiration Date _____</p> <p>Signature _____</p> <p>Print Name _____</p>				
<p>prepared by: Cheryl Balliro</p>				<p>(Please attach copy of original PO)</p>				
<p>FAX To: (800)947-3299 or Mail Purchase Order & Quote To: Philips Healthcare, Business Center, ms0400, 3000 Minuteman Road, Andover, MA 01810 (800)834-7372 opt 5</p>								