

CITY CLERK ORIGINAL

C-7811
10/25/2011

CAD/MPS/RMS/AFR SYSTEM AGREEMENT BETWEEN INTERGRAPH CORPORATION AND CITY OF GLENDALE

This CAD/MPS/RMS/AFR System Agreement ("Agreement") is entered into this 25th day of October, 2011 by and between Intergraph Corporation ("Intergraph"), a Delaware corporation which is authorized to do business in Arizona ("Intergraph"), and the City of Glendale, Arizona, a municipal corporation, acting through the Glendale Police Department ("Glendale"). Intergraph and Glendale may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

- A. Intergraph owns or is authorized to license certain law enforcement computer software programs and related documentation and is in the business of licensing such software programs and providing configuration, development, implementation, maintenance and other support services in respect to such software programs.
- B. Glendale desires to contract for the purchase, implementation, and maintenance of an integrated police technology system that includes Computer Aided Dispatch ("CAD"), Mobile for Public Safety ("MPS"), Record Management ("RMS"), and Automatic Field Reporting ("AFR").
- C. Glendale and Intergraph desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in the Agreement, and other good and valuable consideration, Glendale and Intergraph agree as follows:

Section 1 ORDER OF PRECEDENCE

The exhibits listed below are incorporated into and made a part of this Agreement. In interpreting this Agreement and resolving any ambiguities, and notwithstanding anything in the Exhibits C-Intergraph End-User License Agreement to the contrary, the main body of this Agreement takes precedence over the exhibits and any inconsistency between Exhibits A through G will be resolved in their listed order.

Exhibit A	Pricing and Detail Summary
Exhibit B	Statement of Work
	Attachment A-1 Reliability Test Criteria
	Attachment A-2 Hardware Specifications
	Attachment A-3 Project Deliverable Sign-off Form
	Attachment A-4 Customer Support Center
	Attachment A-5 Sample Acceptance Test Plan
	Attachment A-6 Draft Project Schedule
	Attachment A-7 Configuration Diagram
	Attachment A-8 Interface Descriptions
	Attachment A-9 Training Plan
Exhibit C	Intergraph End-User License Agreement

Exhibit D	U.S. Maintenance Terms and Conditions for Software
Exhibit E	Payment Milestones
Exhibit F	Intergraph Proposal Response to Glendale's Solicitation #10-06 dated 11/22/2010 (including clarifications)
Exhibit G	Glendale Request for Proposal for an Integrated Police Communications System Solicitation #10-06

Section 2 DEFINITIONS

Capitalized terms used in this Agreement have the following meanings:

"Confidential Information" means information of either Party which in documentary or other tangible form is clearly and conspicuously marked as 'Confidential' or some similar marking. Verbal disclosures must be identified as confidential at the time of disclosure and must be confirmed in writing as confidential within thirty (30) days of the initial disclosure. Confidential Information shall not include information that:

- (a) was in the public domain at the time of disclosure, or is subsequently made available to the general public without restriction by the disclosing Party;
- (b) was known to the recipient at the time of disclosure without restrictions on its use or independently developed by the recipient Party without the breach of this Agreement, and there is adequate documentation to demonstrate either condition;
- (c) is used or disclosed with the prior written approval of the disclosing Party;
- (d) was disclosed without restriction to the recipient Party from a source other than the disclosing Party who is not under any obligation of confidentiality with respect to such information.

"Contract Price" means the price for the System, including applicable freight charges and excluding applicable sales tax, if any, as set forth on the Pricing and Detail Summary, Exhibit A.

"Effective Date" means that date upon which the last Party executes this Agreement.

"Equipment" means the equipment that Glendale purchases from Intergraph under this Agreement. Equipment that is part of the System is described in the Pricing and Detail Summary, Exhibit A.

"Extended Warranty Period" shall mean the twelve (12) month coverage period that begins upon the date of Subsystem Cutover.

"Force Majeure" means an event, circumstance, or act of a third party that is beyond a Party's reasonable control (e.g., an act of God, an act of the public enemy, an act of a government entity, strikes or other labor disturbances, hurricanes, earthquakes, fires, floods, epidemics, embargoes, war, and riots or any other similar cause).

"Intergraph Software" means any Intergraph computer software, object code copy, and all of the contents of the files, disk(s), CD-ROM(s) or other media, including any templates, printed materials, and online or electronic documentation, all copies, and any modified versions, fixes, patches and updates.

"Specifications" means the requirements of this Agreement set forth in Exhibit G (Glendale Request for Proposal for an Integrated Police Communications System Solicitation #10-06) as modified and clarified by Intergraph in Exhibit F (Intergraph Proposal Response to Glendale's Solicitation #10-06 dated 11/22/2010) and Exhibit B (Statement of Work).

"Subsystem" means individually the Computer Aided Dispatch ("CAD"), Mobile for Public Safety ("MPS"), Record Management ("RMS") or Automatic Field Reporting ("AFR") systems.

“**System**” means the Equipment, Software, and incidental hardware and materials that are combined together, configured, and implemented in an integrated police technology system, including CAD, MPS, RMS, and AFR. The System is more fully described in the Pricing and Detail Summary set forth in Exhibit A and implemented by the Parties as set forth in the Statement of Work set forth in Exhibit B.

“**Warranty Period**” means the coverage period that begins upon installation of the Software and ends at Subsystem Cutover.

Section 3 SCOPE OF AGREEMENT AND TERM

3.1. **SCOPE OF WORK.** Intergraph will license, ship, configure, install, test, and maintain the System, and perform its other contractual responsibilities, all in accordance with this Agreement. Glendale will perform its contractual responsibilities in accordance with this Agreement. The scope of implementation services to be performed is set forth in the Statement of Work and is hereby incorporated into this Agreement in Exhibit B.

3.2. **GLENDALE'S BUSINESS REQUIREMENTS.** Intergraph is aware of Glendale's business requirements for the intended use of the System as an integrated public safety technology system, including CAD, MPS, RMS, and AFR, as specifically set forth in this Agreement.

3.3. **TERM.** Unless terminated in accordance with other provisions of this Agreement or extended by mutual written agreement of the Parties, the term of this Agreement begins on the Effective Date and continues until the expiration of the Extended Warranty Period.

3.4. **CHANGE ORDERS.** Either Party may request changes within the general scope of this Agreement, including but not limited to alterations, additions, deviations, and omissions from or to the Statement of Work and the associated deliverables. If a requested change causes an increase or decrease in the cost or time required to perform this Agreement, Intergraph will notify Glendale at the time of making the request or within thirty (30) days of receiving a request from Glendale. The Parties will work to agree to an equitable adjustment of the Agreement Price, Statement of Work (including but not limited to changes in the Project Schedule), or both, and will reflect the adjustment in a Change Order. Neither Party is obligated to perform requested changes unless both Parties execute a written Change Order. Adjustments to the Agreement Price require a written amendment to this Agreement and may require Glendale City Council Approval. Change Orders by Glendale to implement an Option as set forth on Exhibit A – Pricing and Detail Summary will be at the price set forth in Exhibit A, less applied discount (if applicable), until Subsystem Cutover to live production (see Exhibit A, note 10).

Intergraph has based its pricing for services to implement the System utilizing the draft Project Schedule (as may be amended by the Parties at the Project Kickoff) shown in **Exhibit B - Statement of Work**. Intergraph will provide notice (on a form mutually agreed to by the project team) to Glendale whenever a material delay is known to or anticipated by Intergraph in order Glendale may have an opportunity to resolve or mitigate the delay. In the event that Glendale causes a material delay in the project, the parties will seek to negotiate an equitable adjustment to pricing and schedule using the change order process in this Section. If an equitable adjustment is not reached through negotiation the Parties will submit to Dispute Resolution pursuant to Section 9 as set forth in this Agreement.

If a change to the Agreement pricing occurs pursuant to this paragraph, Intergraph will substantiate any adjustments to pricing.

3.5. **MAINTENANCE SERVICE.** At the conclusion of the Extended Warranty Period, Intergraph will provide two (2) years of maintenance services for the Equipment and support for the Intergraph Software pursuant to the pricing set forth in Exhibit A and the U.S. Maintenance Terms and Conditions for Software in Exhibit D, unless otherwise modified by this Agreement. The initial two (2) years of maintenance and support services are included in the Agreement Price. Annually, for each year of the prepaid Maintenance Period, Glendale will review and approve the yearly quotation for services.

3.6. SOFTWARE LICENSES. In consideration of payment of license fees Intergraph grants to Glendale and Glendale hereby accepts perpetual licenses for the deliverables in Exhibit A – Pricing and Detail Summary, Exhibit B – Statement of Work, and any subsequent Change Orders executed by the parties (hereafter known as “Software Products” under Exhibit C), subject to the terms and conditions of the End User License Agreement attached hereto as Exhibit C, except as may be modified by this Agreement. Third-party software is licensed to Glendale pursuant to the Software License Agreement delivered with the software product. Ownership of software and deliverables shall at all times rest with Intergraph or the relevant third party. Intergraph may terminate licenses under the End-User License Agreement in Exhibit C and seek any remedies under law or equity for any material breach of their respective End-User License Agreement or for non-payment of the license fees.

Exhibit C is revised/ clarified to reflect the following understanding of the parties:

- Regarding references throughout Exhibit C to subscription licenses, none of the Software Products proposed under this Agreement are licensed as a subscription license.
- Under Section 2.3, the City is not required to install every Update as a condition of licensing the Software Products. In the fourth sentence, “availability” is defined as the date which Glendale installs an Update.
- Under Section 5.0 (Audit), the City will not be liable for interest in the amount of two percent (2%) per month or higher rate allowed by applicable law.
- Notwithstanding anything in the Exhibit C to the contrary, comparable Sections of this Agreement shall take precedent over the following Sections of Exhibit C: Sections 6.2 (Intellectual Property Infringement), 7.0 (Limited Warranties) 8.0 (Warranty Disclaimers), 9.0 (Limitation of Liability), and 11.9 (Governing Law; Venue and Jurisdiction).

Section 4 PERFORMANCE SCHEDULE

The Parties will perform their respective responsibilities in accordance with the draft Project Implementation Schedule as may be amended by the parties at the Project Kickoff. By executing this Agreement, Glendale authorizes Intergraph to proceed with contract performance for items included in the Total System Base Price as set forth in Exhibit A – Pricing and Detail Summary.

Section 5 AGREEMENT PRICE, PAYMENT AND INVOICING

5.1. AGREEMENT PRICE. The Agreement Price in U.S. dollars for all equipment, software and services pursuant to this Agreement, including those furnished by subcontractors, shall not exceed Four Million Two Hundred Thousand dollars (\$4,200,000.00), excluding taxes and change orders for non-option items, as specifically detailed in Exhibit A - Pricing and Detail Summary. The not to exceed price includes optional items which may be added at a later date by the Parties using a Change Order. This Agreement Price also includes two (2) years of maintenance services as set forth in Section 3.5.

5.2. INVOICING AND PAYMENT. Intergraph's and Glendale's authorized representatives will sign-off on the Project Deliverable Sign-off Form (Exhibit B, Attachment A-3) within ten (10) workdays of the completion of a milestone. If a milestone is rejected for any reason, Glendale will provide a written description of the deficiencies to Intergraph within ten (10) workdays. The Parties will work to resolve any deficiencies and Intergraph will resubmit the payment Project Deliverable Sign-off Form for Glendale's approval. If Glendale fails to accept or reject a milestone within ten (10) workdays, or if Glendale elects to place a Subsystem into production operation, then Intergraph will be paid the full contract price for the milestone. Intergraph will submit invoices to Glendale according to the payment milestones set forth in Exhibit E. Glendale will make payments to Intergraph within thirty (30) days after receipt of each invoice. Glendale will make payments when due in the form of a wire transfer, check, or cashier's check from a U.S. financial institution.

5.3. FREIGHT, TITLE, AND RISK OF LOSS. ADDRESS FREIGHT CHARGES, PASSAGE OF TITLE TO EQUIPMENT; RISK OF LOSS. Title to the Equipment and risk of loss will pass to Glendale upon delivery. Title to Software will not pass to Glendale at any time. Intergraph will pack and ship all

Equipment in accordance with good commercial practices. Intergraph shall be totally responsible and liable for the safety, security, and accuracy of shipment inventory of all products until delivered.

5.4. **INVOICING AND SHIPPING ADDRESSES.** Invoices will be sent to Glendale at the following address:

Glendale Police Department
Attn: Budget
6835 North 57th Drive
Glendale, Arizona 85301

Glendale is not liable for delays in payment caused by failure of Intergraph to send invoice to the address specified.

The Equipment and software will be shipped to Glendale at the following address:

Glendale Police Department
Attn: Technical Services
6835 North 57th Drive
Glendale, Arizona 85301

Glendale may change this information by giving written notice to Intergraph.

Section 6 ACCESS TO SITES

Glendale agrees to allow Intergraph personnel reasonable access to Glendale's site and facilities (telephone, facsimile, parking, etc.) during normal business hours and at other times as agreed. Glendale understands and agrees that on-site Intergraph personnel may need to work Saturdays and Sundays during the installation period and will have the work areas accessible to them on those days as required.

Certain individuals associated with Intergraph may require access to Glendale systems or facilities to perform services or provide products pursuant to this Agreement. Therefore, Glendale may need to perform background checks, in the form of fingerprints and criminal background history checks, on those individuals who will have access to Glendale systems or facilities. Intergraph shall provide consent to such background checks in the form required by Glendale. Consequently, Intergraph will, within fifteen (15) calendar days of the signing of this Agreement, furnish Glendale with the completed background check forms from each individual who will require access to Glendale systems or facilities to perform services or provide products pursuant to this Agreement, and Glendale shall reasonably expedite all background checks.

Section 7 REPRESENTATIONS AND WARRANTIES

7.1. **INTERGRAPH WARRANTY COVERAGE.** Intergraph products are warranted, when properly installed, to operate in substantial conformity with Specifications during the initial Warranty Period and for any Extended Warranty Period or maintenance period that may be purchased thereafter. Intergraph products are provided with non-mission critical support (5 days per week, 8 hours per day) up to the point of Subsystem Cutover to live operation. The cost of these warranty support services is included in the price of the Subsystem. After the initial Warranty Period, Glendale will purchase an Extended Warranty or maintenance services that include mission critical support (7 days per week, 24 hours per day). The cost and length of time for an Extended Warranty or maintenance services, if purchased, is reflected in Exhibit A – Pricing and Detail Summary.

7.2. **THIRD-PARTY WARRANTY COVERAGE.** Third-party products are provided with a pass-thru-warranty from the original manufacturer.

7.3. **WARRANTY CLAIMS.** To assert a warranty claim, Glendale must notify Intergraph in writing of the claim during the Warranty Period or Extended Warranty Period. Upon receipt of this notice, Intergraph will investigate the warranty claim. If this investigation confirms a warranty claim, Intergraph will (at its option and at no additional charge to Glendale) repair or replace the defective Intergraph

Software as set forth in the Statement of Work, Exhibit B, Attachment A-4. That action will be the full extent of Intergraph's liability for the warranty claim. Repaired product is warranted for the balance of the original applicable Warranty Period or Extended Warranty Period.

7.4. ORIGINAL END USER IS COVERED. These express limited warranties are extended by Intergraph to the original user purchasing the System for commercial, industrial, or governmental use only, and are not assignable or transferable.

7.5 DISCLAIMER OF OTHER WARRANTIES. THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE INTERGRAPH SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. INTERGRAPH DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Section 8 DELAYS

8.1. FORCE MAJEURE. Neither Party will be liable for its non-performance or delayed performance if caused by a Force Majeure. A Party that becomes aware of a Force Majeure that will significantly delay performance will notify the other Party promptly (but in no event later than fifteen (15) days) after it discovers the Force Majeure. If a Force Majeure occurs, the Parties will execute a change order to extend the Performance Schedule for a time period that is reasonable under the circumstances.

Section 9 DISPUTES

The Parties will use the following procedure to address any dispute arising under this Agreement (a "Dispute").

9.1. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State Arizona.

9.2. NEGOTIATION. Either Party may initiate the dispute resolution procedures by sending a Notice of Dispute ("Notice of Dispute") in accordance with Section 15.8. The Parties will attempt to resolve the dispute promptly through good faith negotiations including 1) timely escalation of the dispute to executives who have authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for the matter and 2) direct communication between the executives. If the dispute has not been resolved within thirty (30) days from the Notice of Dispute, the Parties will proceed to mediation.

9.3. MEDIATION. The Parties will choose an independent mediator within thirty (30) days of a notice to mediate from either Party ("Notice of Mediation"). Neither Party may unreasonably withhold consent to the selection of a mediator. If the Parties are unable to agree upon a mediator, either Party may request that the American Arbitration Association nominate a mediator. Each Party will bear its own costs of mediation, but the Parties will share the cost of the mediator equally. Each Party will participate in the mediation in good faith and will have a business executive with authority to settle the Dispute at the mediation. Final authority to settle may require approval by the Glendale City Council.

9.4. LITIGATION, VENUE and JURISDICTION. If a Dispute remains unresolved for ninety (90) days after receipt of the Notice of Mediation, either Party may then submit the Dispute to a court of competent jurisdiction in the state in which the System is installed. Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts in such state over any claim or matter arising under or in connection with this Agreement.

9.5. CONFIDENTIALITY. All communications pursuant to subsections 9.2 and 9.3 will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality protections provided by applicable law. The use of these Dispute resolution procedures will not be construed under the doctrines of laches, waiver or estoppel to affect adversely the rights of either Party.

Section 10 TERMINATION

10.1 **DEFAULT OR BREACH BY A PARTY.** If either Party fails to perform a material obligation under this Agreement, the other Party may consider the non-performing Party to be in default (unless a Force Majeure causes the failure) and may assert a default claim by giving the non-performing Party a written and detailed notice of default. Except for a default by Glendale for failing to pay any amount when due under this Agreement which must be cured within a fifteen (15) calendar day period after receipt of notice of nonpayment, the defaulting Party will have thirty (30) calendar days after receipt of the notice of default to either cure the default or, if the default is not curable within thirty (30) calendar days, provide a written cure plan. The defaulting Party will begin implementing the cure plan immediately after receipt of notice by the other Party that it approves the plan.

10.2. **FAILURE TO CURE.** If a defaulting Party fails to cure the default as provided above in Section 10.1, unless otherwise agreed in writing, the non-defaulting Party may terminate this Agreement. In the event of termination for default, the defaulting Party will promptly return to the non-defaulting Party any of its Confidential Information. If Glendale is the non-defaulting Party, terminates this Agreement as permitted by this Section, and completes the System through a third Party, Glendale may as its exclusive remedy recover from Intergraph reasonable costs incurred to complete the System to a capability not exceeding that specified in this Agreement less the unpaid portion of the Agreement Price. Glendale will mitigate damages and provide Intergraph with detailed invoices substantiating the charges. Glendale must return all products or pay in full for any products it possesses after the date of termination.

10.3. **TERMINATION FOR CONVENIENCE:** Glendale reserves the right to terminate this Agreement or any part hereof for its sole convenience with thirty (30) days written notice. In the event of such termination, Intergraph shall immediately stop all work hereunder, and shall immediately cause any of its subcontractors and suppliers to cease such work. Intergraph shall be paid a reasonable termination charge consisting of completed milestones and actual costs for work in process up to the date of termination. Intergraph will mitigate damages and provide Glendale with detailed invoices substantiating the charges. Intergraph shall not be paid for any work done after the date of the termination or for any costs incurred by Intergraph's suppliers or subcontractors which Intergraph could reasonably have avoided.

10.4. **FUNDS APPROPRIATION.** If the Glendale City Council does not appropriate funds to continue this Agreement and pay for charges hereunder, Glendale may terminate this Agreement at the end of the then-current fiscal year. Glendale agrees to give thirty (30) days written notice of termination pursuant to Section 15.8 and will pay to Intergraph all completed milestones and work in process and products provided through the date of termination. Intergraph will mitigate damages and provide Glendale with detailed invoices substantiating the charges. Intergraph shall not be paid for any work done after the date of the termination or for any costs incurred by Intergraph's suppliers or subcontractors which Intergraph could reasonably have avoided

Section 11. INSURANCE REQUIREMENTS

Intergraph and subcontractors shall procure and maintain until all of their obligations have been discharged, including until all warranty and maintenance periods under this Agreement are expired, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work or maintenance services hereunder by the Intergraph, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. Glendale in no way warrants that the minimum limits contained herein are sufficient to protect Intergraph from liabilities that might arise out of the performance of the work under this Agreement by the Intergraph, its agents, representatives, employees or subcontractors and Intergraph is free to purchase such additional insurance as may be determined necessary.

11.1 MINIMUM SCOPE AND LIMITS OF INSURANCE: Intergraph shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include the following: premises/operations, products/completed operations, contractual, independent contractors, broad form property damage, and personal injury.

General Aggregate	\$5,000,000
Each Occurrence	\$2,000,000

The City of Glendale, its agents, representatives, officers, directors, officials and employees shall be named an additional insured, with respect to liability arising out of the activities performed by, or on behalf of the Intergraph.

2. Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL)	\$1,000,000
-----------------------------	-------------

For this Agreement, the City of Glendale, its agents, representatives, officers, directors, officials and employees shall be named an additional insured, with respect to liability arising out of the activities performed by, or on behalf of the Intergraph, including automobiles owned, leased, hired or borrowed by the Intergraph.

3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

4. Technology Errors and Omissions Liability

A Technology Errors and Omissions liability policy providing a minimum limit of \$1,000,000 for each claim and \$2,000,000 aggregate. Intergraph shall obtain and maintain said Technology Errors and Omissions liability insurance during the life of this Agreement, including any maintenance periods, and for three years after the completion of the work hereunder.

11.2 ADDITIONAL INSURANCE REQUIREMENTS: The policies are to contain the following provisions:

1. Intergraph's insurance coverage shall be primary insurance.
2. Coverage provided by the Intergraph shall not be limited to the liability assumed under the indemnification provisions of this Agreement.
3. All policies, except Technology Errors and Omissions insurance, shall waive rights of recovery (subrogation) against Glendale, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or maintenance services performed under this Agreement, including Exhibits.

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

11.3 ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than "A-". Glendale in no way warrants that the above-required minimum insurer rating is sufficient to protect Intergraph from potential insurer insolvency.

11.4 VERIFICATION OF COVERAGE: Intergraph shall furnish Glendale with certificate(s) of insurance (ACORD form or equivalent approved by the Glendale) as required by this Agreement. The certificate(s) of insurance is to be issued by a person authorized by that insurer to bind coverage on its behalf.

Certificate(s) of insurance is to be received and approved by the Glendale upon execution of the Agreement and before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of the Agreement and this Agreement may be terminated at the Glendale's option.

All certificates required by this Agreement shall be sent directly to **Glendale Department Risk Management division at 5850 W. Glendale Ave., Glendale, AZ 85301.**

11.5 SUBCONTRACTORS: Intergraph shall furnish to the Glendale separate certificates for each subcontractor. All coverages for subcontractors shall be subject to requirements identified above.

11.6 APPROVAL: Any modification or variation from the insurance requirements in this Agreement must have prior approval from the Glendale Legal Department, whose decision shall be final. Such action will not require a formal Agreement amendment, but may be made by administrative action.

Section 12 INDEMNIFICATION

12.1. GENERAL INDEMNITY BY INTERGRAPH. Intergraph and its successors, assigns and guarantors, will defend, indemnify and hold harmless Glendale, its agents, representatives, officers, directors, officials and employees, from any and all third party liability or expense, due to claims for personal injury, death, sickness or direct damage or destruction to tangible property, real or personal, which may accrue against Glendale, its agents, representatives, officers, directors, officials or employees to the extent it arises from or is caused by a negligent act or omission, or intentional act of Intergraph, its subcontractors, or their employees or agents, while performing their duties under this Agreement, if Glendale gives Intergraph prompt, written notice of any claim or suit. Glendale will cooperate with Intergraph in its defense or settlement of the claim or suit. This section sets forth the full extent of Intergraph's general indemnification of Glendale from liabilities that are in any way related to Intergraph's performance under this Agreement.

Insurance provisions set forth in this Agreement shall not be construed in any way to limit or expand the scope and magnitude of the indemnity requirements.

12.2. GENERAL INDEMNITY BY GLENDALE. Glendale will indemnify and hold Intergraph harmless from any and all liability or expense due to claims for personal injury, death, sickness to any person or direct damage to tangible property, real or personal, which may accrue against Intergraph to the extent it is caused by the negligence of Glendale, its other contractors, or their employees or agents, while performing their duties under this Agreement, if Intergraph gives Glendale prompt, written notice of any claim or suit. Intergraph will cooperate with Glendale in its defense or settlement of the claim or suit. This section sets forth the full extent of Glendale's general indemnification of Intergraph from liabilities that are in any way related to Glendale's performance under this Agreement.

12.3. PATENT AND COPYRIGHT INFRINGEMENT.

12.3.1. Intergraph will, at its own expense, defend, indemnify and hold harmless Glendale, its officers, employees and agents against any action to the extent it is based on a third-party claim, demand, cause of action, debt or liability, including attorneys' fees, alleging that the Intergraph Software used hereunder ("Product") infringes or violates any patent, copyright, trade secret, license or other property rights of any third party ("Infringement Claim"), whether or not such claim is successful. Intergraph's duties to defend and indemnify are conditioned upon: Glendale promptly notifying Intergraph in writing of the Infringement Claim; Intergraph having sole control of

the defense of the suit and all negotiations for its settlement or compromise, unless Intergraph is unwilling or unable to provide such defense or indemnity to Glendale's reasonable satisfaction; and Glendale providing to Intergraph reasonable cooperation.

12.3.2. If an Infringement Claim occurs, or in Intergraph's opinion is likely to occur, Intergraph may at its option and expense: (a) procure for Glendale the right to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing while providing functionally equivalent performance; or (c) in the event neither (a) nor (b) are available to Intergraph, accept the return of the Product once Glendale has arranged for the continuation of the functions performed by the Product and repay Glendale all of the license fees attributable to the products which are not usable.

12.3.3. Intergraph will have no duty to defend or indemnify for any Infringement Claim that is based upon: (a) the combination of the Product with any software, apparatus or device not furnished or approved for use by Intergraph; (b) the use of ancillary equipment or software not furnished or approved by Intergraph and that is attached to or used in connection with the Product; (c) Product designed or manufactured in accordance with Glendale's technical designs, specifications, guidelines or instructions, if the alleged infringement would not have occurred without such designs, specifications, guidelines or instructions; (d) a modification of the Product by a party other than Intergraph; (e) use of the Product in a manner for which the Product was not designed or that is inconsistent with the terms of this Agreement; or (f) the failure by Glendale to install an enhancement release to the Intergraph Software that is intended to correct the claimed infringement and so identified to Glendale by written notice pursuant to Section 15.8.

12.3.4. This Section 12 provides Glendale's sole and exclusive remedies and Intergraph's entire liability in the event of an Infringement Claim. Glendale has no right to recover and Intergraph has no obligation to provide any other or further remedies, whether under another provision of this Agreement or any other legal theory or principle, in connection with an Infringement Claim.

Section 13 LIMITATION OF LIABILITY

In no event shall Intergraph be liable for any indirect, incidental, consequential, punitive or special damages arising out of or in connection with the performance of this Agreement, including Exhibits, regardless of the legal theory under which such damages are incurred. Except for indemnification claims under Section 12.1 for Intergraph's negligence and under Section 12.3 for Infringement Claims, Intergraph's total liability for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause shall not exceed the cumulative amounts paid by Glendale under this Agreement for software, implementation services, training and Extended Warranty as set forth in Exhibit A – Pricing and Detail Summary. Notwithstanding the foregoing, claims related to maintenance services under Exhibit D shall be limited as set forth in Section 17 of Exhibit D. Except as otherwise provided by applicable law, no claim, regardless of form, arising out of or in connection with this Agreement may be brought by Glendale more than two (2) years after Glendale has knowledge of the cause of action.

Section 14 CONFIDENTIALITY AND PROPRIETARY RIGHTS

14.1. CONFIDENTIAL INFORMATION.

14.1.1 During the term of this Agreement, the parties may provide each other with Confidential Information. To the extent permitted by Arizona Public Records Law, A.R.S. § 39-101 *et seq.*, each Party will: maintain the confidentiality of the other Party's Confidential Information and not disclose it to any third party, except as authorized by the disclosing Party in writing or as required by a court of competent jurisdiction; restrict disclosure of the Confidential Information to its employees who have a "need to know" and not copy or reproduce the Confidential Information; take necessary and appropriate precautions to guard the confidentiality of the Confidential Information, including informing its employees who handle the Confidential Information that it is confidential and is not to be disclosed to others, but these precautions will be at least the same degree of care that the receiving Party applies to its own confidential information and will not be

less than reasonable care; and use the Confidential Information only in furtherance of the performance of this Agreement. Confidential Information is and will at all times remain the property of the disclosing Party, and no grant of any proprietary rights in the Confidential Information is given or intended, including any express or implied license, other than the limited right of the recipient to use the Confidential Information in the manner and to the extent permitted by this Agreement.

14.1.2 If Intergraph's confidential information is requested to be divulged under the provisions of the Arizona Public Records laws, A.R.S. §39-101 *et seq.*, Intergraph shall reimburse Glendale for the full cost of litigating City's refusal to release the information, including costs of litigation, City attorney fees, fines, penalties or assessments of opposing party's attorney fees.

14.2. PRESERVATION OF INTERGRAPH'S PROPRIETARY RIGHTS. Intergraph, the third party manufacturer of any Equipment, and the copyright owner of any Non-Intergraph Software own and retain all of their respective proprietary rights in the Equipment and software, and nothing in this Agreement is intended to restrict their proprietary rights. All intellectual property developed, originated, or prepared by Intergraph in connection with providing to Glendale the Equipment, Intergraph Software, or related services remain vested exclusively in Intergraph, and this Agreement does not grant to Glendale any shared development rights of intellectual property. Except as explicitly provided in the EULA (Exhibit C), Intergraph does not grant to Glendale, either directly or by implication, estoppel, or otherwise, any right, title or interest in Intergraph's Proprietary rights. Glendale will not modify, disassemble, peel components, decompile, otherwise reverse engineer or attempt to reverse engineer, derive source code or create derivative works from, adapt, translate, merge with other software, reproduce, distribute, sublicense, sell or export Intergraph Software, or permit or encourage any third party to do so. The preceding sentence does not apply to open source software which is governed by the standard license of the copyright owner.

Section 15 GENERAL

15.1. TAXES. Intergraph shall be responsible for payment of all federal, State of Arizona, and City of Glendale taxes based on Intergraph's income or net worth. The Agreement Price does not include any excise, sales, lease, use, property, or other taxes, assessments or duties, all of which will be paid by Glendale except as exempt by law. If Intergraph is required to pay any of these taxes on Glendale's behalf, Intergraph will send an invoice to Glendale and Glendale will pay to Intergraph the amount of the taxes (including any interest and penalties) within thirty (30) days after the date of the invoice, except interest and penalties that are due solely to the fault of Intergraph. Glendale will be solely responsible for reporting the Equipment for personal property tax purposes, and Intergraph will be solely responsible for reporting taxes on its income or net worth. Glendale is exempt from Federal Excise Tax and will furnish an Exemption Certificate upon Intergraph's request.

15.2. ASSIGNABILITY AND SUBCONTRACTING. This Agreement shall extend to and be binding upon Intergraph, its successors and assigns. Except as provided herein, neither Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld. Any attempted assignment, delegation, or transfer without the necessary consent will be void. Notwithstanding the foregoing, in the event Intergraph separates one or more of its businesses (each a "Separated Business"), reorganizes, or is acquired by a third party, whether by way of a sale, establishment of a joint venture, spin-off or otherwise (each a "Separation Event"), Intergraph may, without the prior written consent of the other Party and at no additional cost to Intergraph, assign this Agreement such that it will continue to benefit the Separated Business and its affiliates (and Intergraph and its affiliates, to the extent applicable) following the separation event. Intergraph may subcontract any of the work, with the City's consent, but subcontracting will not relieve Intergraph of its duties under this Agreement.

15.3 WAIVER. Failure or delay by either Party to exercise a right or power under this Agreement will not be a waiver of the right or power. For a waiver of a right or power to be effective, it must be in a writing signed by the waiving Party. An effective waiver of a right or power will not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power.

15.4. SEVERABILITY. If a court of competent jurisdiction renders any part of this Agreement invalid or unenforceable, that part will be severed and the remainder of this Agreement will continue in full force and effect.

15.5. INDEPENDENT CONTRACTORS. Each Party will perform its duties under this Agreement as an independent contractor. The Parties and their personnel will not be considered to be employees or agents of the other Party. Nothing in this Agreement will be interpreted as granting either Party the right or authority to make commitments of any kind for the other. This Agreement will not constitute, create, or be interpreted as a joint venture, partnership or formal business organization of any kind.

15.6. HEADINGS AND SECTION REFERENCES. The title and section headings in this Agreement are inserted only for convenience and are not to be construed as part of this Agreement or as a limitation of the scope of the particular section to which it refers. This Agreement will be fairly interpreted in accordance with its terms and conditions and not for or against either Party.

15.7. ENTIRE AGREEMENT. This Agreement, including all Exhibits, constitutes the entire agreement of the Parties regarding the subject matter of the Agreement and supersedes all previous agreements, proposals, and understandings, whether written or oral, relating to this subject matter. This Agreement may be amended or modified only by a written instrument signed by authorized representatives of both Parties. The preprinted terms and conditions found on any Glendale purchase order, acknowledgment or other form will not be considered an amendment or modification of this Agreement, even if a representative of each Party signs that document.

15.8. NOTICES. Notices required under this Agreement to be given by one Party to the other must be in writing and either personally delivered or sent to the address shown below by certified mail, return receipt requested and postage prepaid (or by a recognized courier service, such as Federal Express, UPS, or DHL), or by facsimile with correct answerback received, and will be effective upon receipt:

If to Intergraph Corporation:

Intergraph Corporation
Attn: Alan R. Estep, Executive Manager
19 Interpro Road
Madison, AL 35758

If to Glendale:

Glendale Police Department
Attn: Steve Conrad, Police Chief
6835 North 57th Drive
Glendale, Arizona 85301

CC: Glendale City Attorney's Office
Attn: Craig Tindall, City Attorney
5850 West Glendale Avenue
Glendale, Arizona 85301

15.9. COMPLIANCE WITH APPLICABLE LAWS. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of this Agreement or use of the System.

15.10. AUTHORITY TO EXECUTE AGREEMENT. Each Party represents that it has obtained all necessary approvals, consents and authorizations to enter into this Agreement and to perform its duties under this Agreement; the person executing this Agreement on its behalf has the authority to do so; upon execution and delivery of this Agreement by the Parties, it is a valid and binding contract, enforceable in

accordance with its terms; and the execution, delivery, and performance of this Agreement does not violate any bylaw, charter, regulation, law or any other governing authority of the Party.

15.11. SURVIVAL OF TERMS. The following provisions will survive the expiration or termination of this Agreement for any reason: Section 3.5 (Maintenance); Section 3.6 (Software License); Sections 5.1 and 5.2 (Agreement Price and Invoicing and Payment), if any payment obligations exist; Subsection 9.7 (Disclaimer of Implied Warranties); Section 12 (Disputes); Section 12.1 (General Indemnity by Intergraph) for the Term of this Agreement and any maintenance periods under Exhibit D; Section 12.3 (Patent and Copyright Infringement) for the Term of this Agreement any maintenance periods under Exhibit D; and Section 14 (Confidentiality and Proprietary Rights); Section 16 (Immigration Law Compliance); Section 17 (Foreign Prohibitions); Section 18 (Conflicts of Interest); Section 20 (Software Escrow); and all of the General provisions in Section 15.

Section 16 IMMIGRATION LAW COMPLIANCE

- 16.1. Intergraph, and on behalf any subcontractor, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 16.2. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- 16.3. Glendale retains the legal right to inspect the papers of Intergraph or subcontractor employee who performs work under this Agreement to ensure that Intergraph or any subcontractor is compliant with the warranty under subsection (A) above.
- 16.4. Glendale may conduct random inspections, and upon request of the Glendale, Intergraph shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Intergraph agrees to keep papers and records available for inspection by the Glendale during normal business hours and will cooperate with Glendale in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section 17.
- 16.5. Intergraph agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the Glendale. Intergraph also agrees to require any subcontractor to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the Glendale.
- 16.6. Intergraph's warranty and obligations under this Section 17 to the Glendale are continuing throughout the term of this Agreement or until such time as the Glendale determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.
- 16.7. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

Section 17 FOREIGN PROHIBITIONS

Intergraph certifies under A.R.S. §§ 35-391 *et seq.*, and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

Section 18. CONFLICT OF INTEREST

This Agreement is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

Section 19. DISCLAIMER

Any future commercial off-the-shelf functionality or roadmap information Intergraph has shared with Glendale during the proposal / contract activities to date, was to provide an understanding of Intergraph's current expected direction, roadmap or vision and is subject to change at any time at Intergraph's sole discretion. Intergraph does not commit to develop the future features, functions and products discussed in this material beyond that which is specifically committed to be provided by Intergraph as part of this Agreement. Glendale should not factor any future features, functions or products into its current buying decision since there is no assurance that such future features, functions or products will be developed. When and if these future features, functions or products are developed, they will generally be available for licensing by Intergraph.

Section 20 SOFTWARE ESCROW

Intergraph shall provide all source code and any updates or fixes for the Intergraph Commercial Off The Shelf ("COTS") application software that Glendale has purchased from Intergraph for safekeeping with Iron Mountain Intellectual Property Management ("IMIPM"); an escrow agent located at 2100 Norcross Parkway, Suite 150, Norcross, Georgia 30071. The software source code deposited with the escrow agent will be a snapshot of all source code maintained by Intergraph in the form of a **Microsoft Visual Source Safe Archive**. In this way, as beneficiary of the escrow agreement between Intergraph and IMIPM, Glendale will have access to all source code of the products that they license for all versions of the software. Upon taking possession of the source code, Glendale will have the right to use the source for products that they license in the versions currently installed on the System or any subsequent versions in the archive. Intergraph will make a deposit of the Source Safe Archive with the escrow agent once every six (6) months.

Glendale hereby agrees to pay the yearly standard fee for a beneficiary of the source code as set forth in Exhibit A-Pricing and Detail Summary. Iron Mountain will confirm beneficiary status with Glendale within sixty (60) days of the Effective Date.

Glendale shall have access to the source code only in the event Intergraph becomes unable to, or otherwise fails to, maintain the software during the Warranty, Extended Warranty, or maintenance periods, or if Intergraph decides to stop support of the software application(s), or Intergraph becomes bankrupt.

Upon Glendale taking possession of the source code, Glendale hereby agrees as follows:

- (1) Glendale accepts full and total responsibility for the safekeeping of the source code. Glendale agrees that such source code shall be subject to the restrictions of transfer, sale, and reproduction placed on the software itself as stated in the End-User License Agreement(s) in effect at the time of release.
- (2) Glendale agrees to only use source code related to applications for which they own a license. There will be source from other applications in the archive.
- (3) Glendale agrees that any unauthorized release of the source code may cause irreparable harm to Intergraph. Therefore Glendale agrees to compensate Intergraph for any and all damages Intergraph suffers, to include reasonable attorney's fees, resulting directly or indirectly from, but not limited to, the mishandling, misuse, or theft of the source code, regardless of intent, or the absence thereof, by Glendale, its employees, former employees, agents and third-party associates if so ordered by the court. Notwithstanding the foregoing, Glendale agrees that Intergraph is entitled to an immediate temporary injunction to stop any further alleged or actual disclosure.
- (4) No license under any trademark, patent, copyright, or any other intellectual property right, is either granted or implied by the disclosure of the source code to Glendale. Intergraph's disclosure of the source code to Glendale shall not constitute any representation, warranty, assurance, guarantee or inducement by Intergraph to Glendale of any kind, and, in particular, with respect to the non-infringement of trademarks,

- patents, copyrights, or any other intellectual property rights, or other rights of third persons or of Intergraph.
- (5) Intergraph will not be responsible for maintaining the source code. Furthermore, Intergraph will not be liable for any consequences related to the use of source code modified by Glendale.

Remainder of Page Intentionally Left Blank

Signatures on Following Page

The Parties hereby enter into this Agreement as of the Effective Date.

City of Glendale,
an Arizona municipal corporation

Horatio Skute for
By: Ed Beasley
Its: City Manager

ATTEST:

[Signature]
City Clerk (SEAL)

APPROVED AS TO FORM:

[Signature]
City Attorney

Intergraph Corporation,
a Delaware corporation

By:
Its:

STATE OF ALABAMA)
County of Madison) ss.

Subscribed and sworn to before me this _____ day of _____, 2011, by _____, the _____ of Intergraph Corporation, a Delaware corporation.

My Commission Expires:

Notary Public

The Parties hereby enter into this Agreement as of the Effective Date.

City of Glendale,
an Arizona municipal corporation

By: Ed Beasley
Its: City Manager

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

Intergraph Corporation,
a Delaware corporation

Beth Johnson
By: Beth Johnson
Its: Exec. Director

STATE OF ALABAMA)
County of Madison) ss.

Subscribed and sworn to before me this 6th day of October, 2011, by
Beth Johnson, the Exec. Director of Intergraph Corporation, a Delaware
corporation.

Laura Elizabeth Ezzell
Notary Public
Laura Elizabeth Ezzell

My Commission Expires:

My Commission Expires 02/02/2014