Mobile Terms Of Service

For Using Tempe 311

1. Acceptance Of Terms

The Mayor and City Council of Tempe ("City") provides the Tempe 311 app for smart phones (Tempe 311") to you subject to the following Terms of Service Agreement ("Agreement") which may be updated by us from time to time without notice to you. By accessing and using Tempe 311, you accept and agree to be bound by the terms and provision of this Agreement.

2. Description Of Tempe 311

Tempe 311 provides users with an application to report service issues to the City and check on the status of those requests. It also provides users the opportunity to share those reports (type of request, photo and text) if desired on the application. It allows constituents the opportunity to view requests submitted by other users who have requested that particular reports be shared.

Unless explicitly stated otherwise, any new features that augment or enhance Tempe 311 which are added at a future time are covered by this Agreement.

You are responsible for obtaining access to Tempe 311, and that access may involve third-party fees (such as Internet service provider or airtime charges). You are responsible for those fees.

You understand that the technical processing and transmission of the Tempe 311 services, including your requests, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

3. Your Registration Obligations

If you provide any information that is untrue, inaccurate, offensive, not current or incomplete, or the City has reasonable grounds to suspect that such information is untrue, inaccurate, offensive, not current or incomplete, the City has the right to do any or all of the following; delete the information, suspend or terminate your account, and refuse any and all current or future use of the Tempe 311 services (or any portion thereof).

4. City Public Records Policy

Registration data as well as service requests you submit using Tempe 311 are subject to all applicable City, State and Federal public records laws.

5. Member Conduct

You understand that all information, data, text, photographs, graphics or other materials ("Content"), whether marked by the user as shared or not, are the sole responsibility of the person from whom such Content originated. This means that you, and not the City, are entirely responsible for all Content that you submit or otherwise make available via Tempe 311. The City does not control the Content posted via Tempe 311 and, as such, does not guarantee the accuracy, integrity or quality of such Content. You understand that by using Tempe 311, you may be exposed to Content that is offensive, indecent or objectionable. Under no circumstances will the City be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content submitted or otherwise made available via Tempe 311.

We are under no obligation to enforce this Agreement on your behalf against another user. While we encourage you to let us know if you believe another user violated this Agreement, we reserve the right to investigate and take appropriate action at the City's sole discretion.

You agree to not use Tempe 311 to:

- (a) submit Content that is false or inaccurate;
- (b) submit Content that does not generally pertain to the designated topic or theme;
- (c) submit or otherwise make available any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, or otherwise objectionable;
- (d) submit or otherwise make available any Content that is hateful or otherwise objectionable due to its characterization of any person's race, ethnicity, disability, religion, gender, gender identity, sexual orientation or age.
- (e) harm minors in any way;
- (f) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- (g) submit or otherwise make available any Content that you do not have a right to make available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements):
- (h) submit or otherwise make available any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights ("Rights") of any party;
- (i) submit or otherwise make available any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of communication not relevant to specific City service requests;
- (j) submit or otherwise make available any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- (k) intentionally or unintentionally violate any applicable local, state, national or international law;
- (1) "stalk" or otherwise harass another; or
- (m) collect or store personal data about other users in connection with the prohibited conduct and activities set forth in paragraphs (a) through (I) above.

You acknowledge that the City may or may not pre-screen Content that is shared, but that the City and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or remove any Content that is available via Tempe 311. Without limiting the foregoing, the City and its designees shall have the right to remove any Content that violates this Agreement or is otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.

You acknowledge, consent and agree that the City may access, preserve and disclose your account information and Content if required to do so by law or in a good faith belief that such access preservation or disclosure is reasonably necessary to:

- (i) comply with legal process;
- (ii) enforce this Agreement;
- (iii) respond to claims that any Content violates the rights of third parties;
- (iv) respond to your requests for customer service;
- (v) protect the rights, property or personal safety of the City, its users and the public.

You may not attempt to override or circumvent any of the usage rules embedded into Tempe 311. Any unauthorized reproduction, publication, further distribution or public exhibition of the materials provided on Tempe 311, in whole or in part, is strictly prohibited.

You may not trace any information of any other Tempe 311 user or visitor or otherwise use Tempe 311 for the purpose of obtaining information of any other Tempe 311 user.

You may not modify or create derivative works of Tempe 311, decompile or reverse engineer Tempe 311 or otherwise attempt to create the source code from Tempe 311, or in any way attempt to, or encourage or assist any other person to, circumvent or modify any security technology or software that is part of Tempe 311.

You may not attempt to gain unauthorized access to Tempe 311 or the computer systems and networks connected to Tempe 311 through hacking, password mining, or any other means.

You may not use any robot, spider, search/retrieval application, or other automated device, process or means to access, retrieve, scrape, or index any portion of Tempe 311 or any City content. You may not access, retrieve or index any portion of Tempe 311 for purposes of constructing a searchable database of data collected by Tempe 311.

You may not release the results of any performance or functional evaluation of Tempe 311 to any third party without prior written approval of the City for each such release.

You may not take any action that imposes, or may impose, in the City's sole discretion, an unreasonable or disproportionately large load on the City's technology infrastructure or otherwise make excessive traffic demands of Tempe 311.

6. Interstate Nature Of Communications On Tempe 311

When you use the application, you acknowledge that in using Tempe 311 to send service requests, you will be causing communications to be sent potentially through a variety of networks (Internet service provider, wireless phone network, etc.) As a result, even communications that seem to be intrastate in nature can result in the transmission of interstate communications regardless of where you are physically located at the time of transmission. Accordingly, you agree that use of the Tempe 311 may result in interstate data transmissions.

7. Content Submitted On Tempe 311

With respect to Content you submit on Tempe 311, the City may use, distribute, reproduce, modify, adapt, and publicly display such Content for the purposes of promoting Tempe 311 or any other Cityrelated efforts. This right does not terminate.

8. Submissions To The City

By submitting ideas, suggestions, documents, and/or proposals ("Submissions") to the City through its suggestion or feedback pages, you acknowledge and agree that:

- (a) your Submissions do not contain confidential or proprietary information;
- (b) the City is not under any obligation of confidentiality, express or implied, with respect to the Submissions;
- (c) the City shall be entitled to use or disclose (or choose not to use or disclose) such Submissions for any purpose, in any way, in any media worldwide;
- (d) the City may have something similar to the Submissions already under consideration or in development;
- (e) your Submissions automatically become the property of the City without any obligation of the City to you;
- (f) you are not entitled to any compensation or reimbursement of any kind from the City under any circumstances.

9. Indemnity

You agree to indemnify and hold the City and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand (including reasonable attorneys` fees) made by any third party due to or arising out of:

- (a) Content you submit or otherwise make available through Tempe 311,
- (b) your use of Tempe 311,
- (c) your connection to Tempe 311,
- (d) your violation of this Agreement,
- (e) your violation of any Rights of another.

10. No Commercial Reuse Of Tempe 311

You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion or use of, or access to, Tempe 311.

11. Modifications To Tempe 311

The City reserves the right at any time and from time to time to modify, or discontinue, temporarily or permanently, Tempe 311 (or any part thereof) with or without notice. You agree that the City shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Tempe 311 (or any part thereof).

12. Termination

You agree that the City may, without prior notice, immediately terminate, limit your access to or suspend your Tempe 311 service. Cause for such termination, limitation of access or suspension shall include but not be limited to:

- (a) breaches or violations of this Agreement or other incorporated agreements or guidelines,
- (b) requests by law enforcement or other government agencies,
- (c) discontinuance or material modification to Tempe 311 (or any part thereof),
- (d) unexpected technical or security issues or problems,
- (e) extended periods of inactivity,
- (f) engagement by you in fraudulent or illegal activities.

Further, you agree that all terminations, limitations of access and suspensions for cause shall be made in the City's sole discretion and that the City shall not be liable to you or any third party for any termination of your account, any associated email address, or access to Tempe 311.

13. Links

The City may provide links to other World Wide Web sites or resources. You acknowledge and agree that the City is not responsible for the availability of such external sites or resources.

Tempe 311 may facilitate your use of third party services not provided by the City ("Third Party Services"). The City makes no representations or warranties regarding the performance of such Third Party Services, their compliance with applicable laws and regulations, or any other aspects of such Third Party Services. Your use of Third Party Services is at your own risk and you are solely responsible for complying with all legal and contractual requirements necessary for using Third Party Services.

14. The City's Proprietary Rights

You acknowledge and agree that Tempe 311 contains proprietary and confidential information that is owned by the City and protected by applicable intellectual property and other laws. You will not use such proprietary information in any way whatsoever except for use of Tempe 311 in compliance with the provisions of this Agreement.

Disclaimer Of Warranties

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- (a) YOUR USE OF TEMPE 311 IS AT YOUR SOLE RISK. THE APPLICATION IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE CITY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT
- (b) THE CITY AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS MAKE NO WARRANTY THAT.
- (i) TEMPE 311 WILL MEET YOUR REQUIREMENTS;
- (ii) TEMPE 311 WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERRORFREE;
- (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF TEMPE 311 WILL BE ACCURATE OR RELIABLE;
- (iv) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED;
- (v) TEMPE 311 WILL BE FREE FROM CORRUPTION, VIRUSES, HACKING, OR OTHER SECURITY INTRUSION.

15. Limitation Of Liability

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE CITY SHALL NOT BE LIABLE TO YOU FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES RESULTING FROM:

- (a) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICES;
- (b) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES;
- (c) ANY CONTENT OBTAINED FROM THE SERVICES;
- (d) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE CITY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

YOU EXPRESSLY AGREE THAT THE CITY IS NOT RESPONSIBLE FOR ANY CONTACT OR INTERACTION BETWEEN YOU AND ANY OTHER USER OF TEMPE 311 AND THAT YOU BEAR THE SOLE RISK OF TRANSMITTING THROUGH THE APPLICATION ANY CONTENT, INCLUDING INFORMATION WHICH IDENTIFIES YOU OR YOUR LOCATION.

YOU AGREE THAT THE NEGATION OF DAMAGES SET FORTH ABOVE IS A FUNDAMENTAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE CITY AND YOU AND THAT THE FOREGOING LIMITATION OF LIABILITY IS AN AGREED UPON ALLOCATION OF RISK BETWEEN YOU AND THE CITY. YOU ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION OF LIABILITY THE CITY WOULD NOT PROVIDE TEMPE 311 TO YOU.

16. Notice

The City may provide you with notices regarding Tempe 311, including changes to this Agreement, by email, SMS, text message, postings on Tempe 311, or any other reasonable means now known or hereafter developed. Notices shall be effective immediately.

Such notices may not be received if you violate this Agreement by accessing the Tempe 311 in an unauthorized manner. You agree that you will be deemed to have received any and all notices that would have been delivered had you accessed Tempe 311 in an authorized manner.

17. Minor

You represent that you are 13 years of age or older and, if you are under the age of 18, you either are an emancipated minor, or have obtained the legal consent of your parent or legal guardian to accept and agree to be bound by the terms and provisions of this Agreement.

If you have agreed to allow your minor child, or a child for whom you are legal guardian ("Minor"), to use Tempe 311, you agree that you shall be solely responsible for: (a) the online conduct of such Minor, (b) monitoring such Minor's access to and use of Tempe 311, and (3) the consequences of any use of Tempe 311 by such Minor.

18. Governing Law And Venue

This Agreement is governed by the laws of the State of Arizona without regard to any conflict of law provisions. You agree that any claim or dispute with the City relating in any way to your use of Tempe 311 shall be brought exclusively before a state or federal court sitting in Maricopa County and you irrevocably waive any jurisdictional, venue, or inconvenient forum objections to such courts.

19. Miscellaneous

This Agreement constitutes the entire agreement between you and the City with respect to your use of Tempe 311, superseding any prior version of this Agreement between you and the City with respect to Tempe 311.

If any provision of this Agreement shall be unlawful, void, or unenforceable, then that provision shall be deemed severed from this Agreement and shall not affect the validity or enforceability of the remaining provisions of this Agreement.

The City's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

You agree that any cause of action arising out of or related to your use of Tempe 311 must commence within one year after the cause of action accrues. Otherwise, such cause of action is permanently barred. The section titles in this Agreement are for convenience only and have no legal or contractual effect.