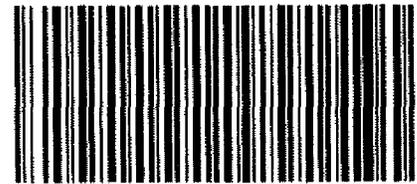


SE1
1/13/11

When recorded return to:
Maricopa County Department of Finance
Attn: Real Estate Services Manager
301 West Jefferson, Suite 960
Phoenix, Arizona 85004



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
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2 OF 2

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**INTERGOVERNMENTAL AGREEMENT
FOR THE USE OF REAL PROPERTY
BETWEEN
MARICOPA COUNTY
AND
THE CITY OF TEMPE**

**City Contract No. C2011-08
Maricopa County #C 18-11-017-M-00**

This Intergovernmental Agreement ("IGA" or "Agreement") is dated this 23rd day of January, 2011 ("Effective Date") by and between MARICOPA COUNTY, a political subdivision of the state of Arizona ("County") and THE CITY OF TEMPE, an Arizona municipal corporation ("City"). The County and City are sometimes referred to herein collectively as "Parties" and individually as a "Party."

RECITALS

WHEREAS, County owns certain real property located in Maricopa County, Arizona and more specifically described in **Exhibit "A"** attached hereto (the "Property");

WHEREAS, County and City entered into that certain agreement dated January 22, 1991 (Recording No. 1991-054602) as amended on or about August 31, 2001, for the installation and maintenance of certain communication systems and equipment ("Prior Agreement"). County and City desire to terminate the Prior Agreement and replace it in its entirety with this IGA;

WHEREAS, on or about August 20, 2009, City entered into that certain Amended and Restated Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the Regional Wireless Cooperative Network (Maricopa County Recording No. 2010-0330379) ("Amended IGA"). The Amended IGA is attached hereto as **Exhibit "B."** The purpose of the Amended IGA is to create a Regional Wireless Cooperative ("RWC") for a Public Safety and Public Service communications system that is planned, designed, constructed, operated, maintained and financed by members of the RWC. City desires to use the Property as a part of the RWC.

WHEREAS, the City desires to continue to use the Property for the operation and maintenance of certain communication systems and equipment previously installed which improve communications for the benefit of the public safety and welfare; and

WHEREAS, County and City are authorized by A.R.S. § 11-951 et seq. to contract for services or jointly exercise any powers common to the Parties and to enter into agreements with one another for joint cooperative action. City is further authorized to enter into this Agreement pursuant to Tempe City Charter, Section 1.03.

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals.** The Recitals, by this reference, shall be incorporated herein and are made a part of this Agreement.

2. **Term.** The term of this IGA shall be for twenty (20) years from the Effective Date unless sooner terminated as provided for in this Agreement.

2.1 **Option to Renew.** Provided this Agreement is in full force and effect and City is not in default under any of the terms and conditions of this IGA at the time of notification or commencement, County hereby grants City a one-time option to renew this IGA for a period of ten (10) years on the same terms and conditions of this Agreement unless otherwise agreed to by the Parties in writing ("Option").

2.2 **Exercise of Option.** If City elects to exercise the Option, City shall provide County with written notice no earlier than the date which is one-hundred eighty (180) days prior to the expiration of this IGA. If City fails to provide such notice, City shall have no further or additional right to extend this IGA, unless the parties otherwise agree in writing.

3. **Use of Property.** Any use of the Property by City shall be solely for the public safety and welfare. County hereby authorizes City the ability to continue to use and unlimited access to the Property for the operation and maintenance of communications systems and equipment previously installed by the City as outlined in Section 3.1 of this IGA (the "Equipment"). This IGA does not expressly or impliedly authorize City to install additional communications systems and equipment on the Property outside of any replacement/upgrade components of the existing systems. Should the need arise for City to construct and/or install additional communications systems and equipment on the Equipment or the Property for the public safety and welfare ("Additional Equipment"), City shall be subject to County procurement requirements, if necessary, and shall obtain the prior written approval of the Maricopa County Board of Supervisors in the form of an amendment to this IGA or a separate agreement before any Additional Equipment is constructed and/or installed upon the Property. If the Additional Equipment to be constructed and/or installed upon the Equipment or the Property is owned and operated by a corporation, limited liability company, partnership or other entity ("Owner"), and the Owner is to pay a fee to City in the form of rent or otherwise ("Fee"), the Fee shall be apportioned 50% to County and 50% to City.

3.1 **Equipment Previously Installed.** (1) Building and antenna mounting

structure and related equipment; (2) All communications systems and equipment installed pursuant to that certain intergovernmental agreement between City and the Federal Bureau of Investigation ("FBI") dated on or about September 9, 2004 (City Contract No. C 2004-179, Maricopa County Recording No. 2004-1179988) and approved by the Maricopa County Board of Supervisors on or about June 2, 2004 (Agenda No. C-76-04-012-2-00); and (3) All communications systems and equipment installed pursuant to that certain license agreement between City and Southwest Ambulance ("SWA") dated on or about September 9, 2004 (City Contract No. C 2004-180, Maricopa County Recording No. 2004-1179989) and approved by the Maricopa County Board of Supervisors on or about March 17, 2004 (Agenda No. C-76-04-008-2-00).

3.2 County Reserved Space on Equipment. City shall reserve space on the Equipment and any Additional Equipment hereafter installed upon the Property pursuant to the terms of this IGA for County to co-locate and install its own communications systems and equipment ("County Equipment"). County shall exercise reasonable efforts to configure and co-locate its facilities and equipment in such a manner as to not interfere with the Equipment or Additional Equipment.

3.3 Construction and/or Installation of Additional Equipment. City's ability to construct and/or install Additional Equipment upon the Property is subject to the approval of the Maricopa County Board of Supervisors as outlined in Section 3 and contingent upon City obtaining all legally required permits and approvals. Approval for the construction and/or installation of any Additional Equipment by the Maricopa County Board of Supervisors shall not be considered the granting of any permit or receipt of any type of approval from Maricopa County. Upon completion of any installation or construction upon the Property, Equipment or Additional Equipment, City shall immediately provide to County a copy of the as-builts. City shall ensure that the construction or installation of Additional Equipment shall not cause interference with County Equipment and the Parties shall work together to ensure all Equipment works without interference.

3.4 Limited Use. The use of the Property pursuant to the terms of this IGA shall be solely for communications systems and equipment for the public safety and welfare and those uses necessary to operate the Equipment or Additional Equipment. City shall not use the Property, the Equipment or the Additional Equipment for any use not authorized herein. This IGA shall be considered automatically revoked without further action by County if the unauthorized use is not corrected within thirty (30) days after written notice by County to City to abate any unauthorized use. City shall cease use of the Property and take appropriate action as authorized by County to remove the Equipment or the Additional Equipment from the Property.

3.5 Utility Easements. County retains the right to establish access or utility easements through the Property provided, however, County shall not interfere

with City's use of or access to the Property, the Equipment or the Additional Equipment. Reasonable notice shall be provided to City and such installation of utilities shall be coordinated with City to minimize any downtime. Relocation of any existing facilities by City shall be coordinated with, and prior written approval obtained from, County.

3.6 **Security.** City shall ensure the security of the site and will not allow unauthorized persons to have access thereto. City will not allow any nonofficial use of the facility by private or commercial organizations without the prior written consent of Maricopa County.

4. **Fees; Costs; Utility Costs.** City shall pay County a fee of one and No/100 dollars (\$1.00) per year for the use of the Property. City shall be solely responsible for the cost for maintaining the road on the Property. City shall be responsible for all utility costs and expenses associated with operating and maintaining the Equipment and any Additional Equipment, except for County Owned equipment that is co-located on the premises.

5. **Ownership of Equipment.** It is expressly understood and agreed that City retains title to all equipment installed by it and may modify, replace or remove such equipment when necessary. County and City acknowledge that all equipment and improvements of City shall be deemed personal property of City.

6. **Compliance with laws.** City agrees to comply with all federal, state and local statutes, laws, ordinances, rules, regulations and instructions which relate to the construction, reconstruction, management, operation and maintenance of the Equipment or Additional Equipment. City shall obtain all licenses and permits and pay all taxes, assessments, fees and other expenses of any nature, associated with the construction or installation of Additional Equipment as well as the management, operation and maintenance of the Equipment or any Additional Equipment. City shall further comply with the following:

6.1 **Equal Employment Opportunity.** City shall not discriminate against any employee or applicant for employment because of race, age, handicap, disability, color, religion, sex or national origin. City shall comply with Title VI and Title VII of the Federal Civil Rights Act; the Federal Rehabilitation Act; the Age Discrimination in Employment Act; the Americans with Disabilities Act of 1990, A.R.S. § 41-1461 et seq., A.R.S. § 41-1492 et seq., 29 USCA § 721 (Section 504), and Arizona Executive Order 75-5 which mandates that all persons shall have equal access to employment opportunities and any changes thereto or to any new laws or requirements implemented during the term of this Agreement.

6.2 **Immigration Reform and Control Act of 1986 (IRCA).** City understands and acknowledges the applicability of the Immigration Reform and Control Act (IRCA). City agrees to comply with the IRCA in performance of this IGA and, upon request, permit County inspection of personnel records to verify such compliance.

6.3 **Taxes.** City shall pay or cause to be paid taxes of whatever character which may be levied or charged upon the rights of City to use the Property, Equipment or Additional Equipment, or upon City's improvements, fixtures, equipment or other property or upon City's operations under this IGA

6.4 **Employer Sanctions Law.**

Both parties warrant that they are in compliance with A.R.S. § 41-4401 and further acknowledge:

6.4.1 That each party and its subcontractors, if any, warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. § 23-214, Subsection A;

6.4.2 That a breach of a warranty under Section 4.4.1 above, shall be deemed a material breach of the contract that is subject to penalties up to and including termination of the Agreement;

6.4.3 That each party retains the legal right to inspect the papers of the other party or its subcontractor's employee(s) who work under the Agreement to ensure that the party or subcontractor is complying with the warranty provided under Section 4.4.1 above and that each party agrees to make all papers and employment records of said employee(s) available during normal working hours in order to facilitate such an inspection;

6.5 **Verification Regarding Compliance with Arizona Revised Statutes §§ 35-391.06 and 35-393.06 Business Relations with Sudan and Iran.**

6.5.1 By entering into this Agreement, both parties certify that they do not have scrutinized business operations in Sudan or Iran. Each party agrees to obtain statements from its subcontractors certifying compliance and shall furnish the statements to the other party's Procurement Officer upon request. These warranties shall remain in effect through the term of the Agreement.

6.5.2 Both parties may request verification of compliance from the other for any contractor or subcontractor performing work under the Agreement. Should either party suspect or find that the other party's contractor or any of its subcontractors are not in compliance, that party may pursue any and all remedies allowed by law, including, but not limited to, suspension of work, termination of the Agreement for default, and suspension or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the party from whom compliance is sought.

7. **Entry and Inspection.** County shall have the right at all times to enter onto and inspect the Equipment or any Additional Equipment on the Property. County will notify City of any unsatisfactory condition relative to the construction, management, operation and

maintenance of the Equipment of any Additional Equipment. City shall take immediate action to correct such condition(s) as City's expense.

8. **Litter and Trash Removal.** All trash and debris on the Property must be removed from the site by City and disposed of in an appropriate manner. No equipment or materials shall be stored outside of any enclosure.

9. **Environmental Compliance.** If City activities result in adverse environmental impacts, City will be fully accountable for any resulting site assessment and cleanup cost required to restore the property. County will not seek compensation or restitution from City as a "Potentially Responsible Party" for any release of a contaminant/hazardous substance on the premises prior to the effective date of this IGA.

9.1 **Regulated Uses.** Subject to the provisions set forth herein, County agrees that City may use, generate, store, and properly dispose of any hazardous material at or on the Property as long as it is solely for the construction and/or installation, operation and maintenance of the Equipment or any Additional Equipment.

City shall provide to County, in writing, a complete list identifying all hazardous material or petroleum products and approximate quantities to be brought on site and when such products will be removed.

Additionally, City shall prepare and implement any necessary remediation action plan in accordance with all applicable federal, state, and city statutes, laws, ordinances, rules and regulations. City shall keep Material Safety Data Sheets documents on site for those materials and products.

City shall report to County within twenty-four (24) hours of knowledge of any event or occurrence at the Property which may or does result in pollution or contamination adversely affecting lands, water or facilities owned or managed by County, including the facilities which are subject of this IGA.

9.2 **Indemnification and Responsibility.** City shall protect, defend, indemnify and hold harmless County from and against all liabilities, costs, charges and expenses, including civil or criminal penalties, attorney's fees and court costs arising out of or related to an activity involving or use of a regulated substance under any applicable federal, state, or local environmental laws, regulations, ordinances or amendments thereto because of: (a) any such substance that came to be located on the Property, the Equipment and/or any Additional Equipment due to City's use or occupancy of the lands pursuant to the terms of this or any previous IGA; or (b) any release, threatened release or escape of any substance in, on, under or from said Property that is caused, in whole or in part, by any conduct, action or negligence of City.

For the purposes of this IGA, the term "regulated substances" shall include substances defined as "regulated substances," "hazardous waste," "hazardous substances," "hazardous materials," "toxic substances" or "pesticides" in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act, as amended in 1986 to include Superfund Amendments and Reauthorization Act, the Hazardous Materials Transportation Act, the Toxic Substance Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the relevant local and state environmental laws, and the regulations, rules and ordinances adopted and publications promulgated pursuant to the local, state, and federal laws. This indemnification shall include, without limitation, claims or damages arising out of any violations of applicable environmental laws, regulations, ordinances, rules or subdivisions thereof. This environmental indemnity shall survive the expiration or termination of this IGA and/or any transfer of all or any portion of the Communication Sites and shall be governed by the laws of the State of Arizona, if applicable. City accepts sole responsibility and liability for all wastes produced by its operation, activities and occupation of the premises and shall comply with all applicable laws concerning such wastes, including federal, state, and local regulatory requirements. Any such waste must be disposed of in compliance with the above.

City agrees it shall be solely responsible for and assumes all responsibility for the actions of City, its agents, employees and contractors in generating, storing, releasing, placing or allowing to remain on the property any hazardous substances, hazardous wastes, or toxic substances (hereinafter collectively referred to as "Hazardous Substances"), as those terms as defined and regulated under CERCLA, 42 U.S.C. 9601 et seq., RCRA, 42 U.S.C. 6901 et seq., or TSCA, 15 U.S.C. 2601 et seq.. City further agrees to comply with all environmental laws and regulations and to take such other actions as may be reasonably required to protect against environmental liabilities. Any such "hazardous substances" must be disposed of pursuant to and in compliance with all required laws and regulations concerning the use and disposal of such substances.

Management and proper disposal of all hazardous material is the responsibility of City. City must keep appropriate and required documentation relating to the management and disposal of all hazardous material.

County agrees to defend, indemnify, and hold harmless City and its agents and employees against all loss, liability, or expense relating to personal, property, or economic injury arising from the presence of Hazardous Substances located on the Property (other than any such Hazardous Substances generated, stored, released, placed or allowed to remain on the Property by the City, its agents, employees and contractors in violation of the law).

10. **Insurance.** County and City acknowledge and agree they are each self-insured.

10.1 If, during the term of this IGA, any property, buildings, fixtures, equipment or improvements under control of City shall be destroyed or damaged in whole or in part by fire or any other cause, except condemnation, City shall give immediate notice to County. City shall immediately secure the area to prevent injury, vandalism and further damage to person, improvements and contents thereof. City shall restore the premises at least to the extent permitted by insurance proceeds. However, City will remain responsible for clean-up and to restore the premises to a condition reasonable under the circumstances and acceptable to County. If the Equipment or Additional Equipment are capable of restoration within ninety (90) days, this IGA shall continue in full force and effect.

If City can demonstrate and County may corroborate, that the Equipment and Additional Equipment are not capable of restoration within 90 days, City shall have the right to terminate this IGA or install a temporary facility for such length of time as necessary to complete restoration and resume operation.

City shall, as soon after damage as possible, apply for all required permits of whatever nature to restore damaged improvements, and complete restorations within a date mutually agreeable to the parties. Should such damage or destruction occur within twelve (12) months of the IGA's normal termination date, City and County may mutually agree to the extent of the restoration, if any.

11. **Indemnification.** Except as otherwise expressed herein, each party (as "indemnitor") agrees to indemnify, defend and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, damages, judgments, costs or expenses (including reasonably attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death), or property damage, except to the extent that such claims are caused by the willful misconduct or gross negligence of the indemnitor, its officers, officials, agents, employees or volunteers. At its own expense, the indemnitor agrees to defend all actions brought against the indemnitee, its agents, or its employees for which the indemnitor is responsible for indemnification hereunder, and if the indemnitor fails to do so, the indemnitee (at its option, but without being obligated to do so) may, at the expense of the indemnitor, upon notice to indemnitor, defend such actions, and indemnitor must pay and discharge any and all settlements and/or judgments that arise therefrom. The provisions of this Section shall survive the expiration or earlier termination of this Intergovernmental Agreement.

12. **Conflicts; Termination.** This IGA is subject to A.R.S. §38-511 and may be cancelled pursuant thereto by either Party. This IGA may be terminated by either Party for any reason by written notice one-hundred eighty (180) days prior to the effective date of such termination. This IGA shall be automatically terminated if City's participation in the RWC ends or is terminated for any reason.

13. **Default; Remedies.**

13.1 **City Default.** Each of the following shall constitute a material breach of this IGA and an event of default by City ("City Event of Default") hereunder: City's failure to observe or perform any of the material covenants, conditions or provisions of this IGA to be observed or performed by City, where such failure shall continue for a period of thirty (30) days after City receives written notice thereof from County, or such additional period of time thereafter as City and County may agree in writing and may be reasonably necessary under the circumstances to cure such default, if City commences to cure such default within said thirty (30) day period and thereafter diligently proceeds to cure such default.

13.2 **County Remedies.** In the event City fails to perform any of its material obligations under this IGA and is in default pursuant to Section 13.1 of this IGA, County may, at its option, terminate this IGA. Further, upon the occurrence of any City Event of Default and at any time thereafter, County may, but shall not be required to, exercise any remedies now or hereafter available to County at law or in equity.

13.3 **County Default.** Each of the following shall constitute a material breach of this IGA and an event of default by County ("County Event of Default") hereunder: County's failure to observe or perform any of the material covenants, conditions or provisions of this IGA to be observed or performed by County, where such failure shall continue for a period of thirty (30) days after County receives written notice thereof from City, or such additional period of time thereafter as County and City may agree in writing and may be reasonably necessary under the circumstances to cure such default, if County commences to cure such default within said thirty (30) day period and thereafter diligently proceeds to cure such default.

13.4 **City Remedies.** In the event County fails to perform any of its material obligations under this IGA and is in default pursuant to Section 13.3 of this IGA, City may, at its option, terminate this IGA. Further, upon the occurrence of any County Event of Default and at any time thereafter, City may, but shall not be required to, exercise any remedies now or hereafter available to City at law or in equity.

14. **Notice Addresses.** All notices herein required to be given to County in writing and all Fee payments herein required shall be sent to County at:

Maricopa County Department of Finance
Attn: Real Estate Services Manager
301 W. Jefferson, Suite 960
Phoenix, Arizona 85003

Notices to City shall be sent to:

Real Estate Officer
City of Tempe
31 E. 5th St.
Tempe, Arizona 85281

14.1 Notice Requirements. All notices required or permitted by this IGA or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, and shall be deemed sufficiently given if served in a manner specified in this Section 14.1. The addresses specified in Section 14 shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice.

14.2 Date of Notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier.

15. Return of Premises. At the termination or expiration of this IGA, City shall return the Property to County in good condition. City may abandon the improvements made thereon or remove said improvements and restore the Property to its original condition if so directed by County.

16. Intentionally Omitted.

17. No Assignment. City shall not assign any of the rights received pursuant to the terms of this IGA without the prior written consent of County.

18. Time is of the Essence. Time is of the essence of this IGA. If the date for performance of any obligation hereunder or the last day of any time period provided herein shall fall on a Saturday, Sunday or legal holiday of the State of Arizona, then said date for performance or time period shall expire on the first day thereafter which is not a Saturday, Sunday or a legal holiday. Unless otherwise specifically indicated to the contrary, the word "days" as used in this IGA shall mean and refer to calendar days and not business days.

19. No Partnership or Joint Venture. Nothing contained in this IGA shall create any partnership, joint venture or other arrangement between County and City. Except and expressly provided herein, no term or provision of this IGA is intended or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.

20. **Venue; Governing Law.** The proper venue for any proceeding at law or in equity or under the provisions for arbitration shall be Maricopa County, Arizona and the County and City hereby waive any right to object to venue. This IGA shall be construed in accordance with and be governed by the laws of the State of Arizona.

21. **Entire Agreement.** This IGA, together with any exhibits attached hereto and any agreements executed contemporaneously herewith, constitutes the entire agreement between the Parties and sets forth all of the covenants, promises, agreements, conditions and understandings between County and City, and there are no covenants promises, agreements, conditions or understandings, either oral or written, between County and City other than as set forth herein. This IGA shall be construed as a whole and in accordance with its fair meaning and without regard to any presumption or other rule requiring construction against the party drafting this IGA. This IGA cannot be modified or changed except by a written instrument executed by County and City. County and City have reviewed this IGA and have had the opportunity to have it reviewed by legal counsel.

22. **Waiver.** Waiver of any breach of any term, conditions or covenant herein contained shall not be deemed to be a waiver of any other term, condition or covenant herein, or of a subsequent breach of any term, covenant or condition herein. County's consent to, or approval of, any subsequent or similar act shall not be deemed to render unnecessary the obtaining of County's consent to, or approval of, any subsequent or similar act by City, to be construed as the basis of an estoppel to enforce the provision or provisions of this IGA requiring such consent.

23. **Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law, but if any provision shall be invalid or prohibited thereunder, such provision shall be ineffective to the extent of such prohibition or invalidation but shall not invalidate the remainder of such provision or the remaining provisions.

24. **Authority to Execute.** Any individual executing this IGA on behalf of or as representative for a corporation or other person, firm, partnership or entity represents and warrants that he/she is duly authorized to execute and deliver this IGA on behalf of said corporation, person, firm, partnership or other entity, that all approvals have been obtained and that this IGA is binding on said entity in accordance with its terms.

25. **Headings.** Sections and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Lease.

26. **Cooperation.** County and City agree to execute and/or deliver to each other such other instruments and documents as may be reasonably necessary to fulfill the covenants and obligations to be performed by County and/or City pursuant to this IGA.

27. **Not Binding Until Signed.** Submission of this instrument for examination shall not bind County in any manner, and no obligation on County shall arise until this IGA is executed and delivered by both County and City.

28. **Delegation of Authority.** Since this IGA will require administrative action, including execution of documents, from time to time to carry out the spirit and intent of the Agreement, both, acting individually, the Chief Financial Officer for Maricopa County and the Real Estate Manager for Maricopa County are hereby given the authority and charged with the responsibility for proper administration of this IGA, whether or not specific authority is granted in any provision of this IGA.

29. This Agreement is subject to the notice requirements of A.R.S. § 11-256.01.

IN WITNESS WHEREOF, the parties have signed this Intergovernmental Agreement

CITY OF TEMPE

MARICOPA COUNTY

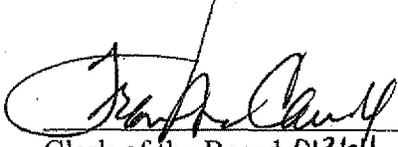
By: 
Its: Mayor

By:  FEB 04 2011
Chairman of the Board

ATTEST:

ATTEST:


City Clerk


Clerk of the Board 012611

APPROVED AS TO FORM:

APPROVED AS TO FORM:

 1/13/11
City Attorney Date

 2/3/11
Attorney for County Date

EXHIBIT A

Legal Description

Being a part of the Southeast quarter (SE 1/4) of Section Twenty (20) and the Northeast quarter (NE 1/4) of Section Twenty nine (29), Township One (1) North, Range Four (4) East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the Southwest corner of the Southeast quarter (SE 1/4) of Section 20;
Thence North $0^{\circ} 04' 25''$ East along the West line of said Southeast quarter (SE 1/4) for a distance of 270.00 feet;
Thence North $59^{\circ} 45' 25''$ East 250.00 feet;
Thence South $87^{\circ} 38' 35''$ East 95.00 feet;
Thence South $56^{\circ} 56' 50''$ East parallel with and 100 feet Southwesterly from the center line of the new location of East Broadway Road for a distance of 464.07 feet;
Thence South $0^{\circ} 05' 25''$ West 390.00 feet;
Thence North $89^{\circ} 54' 35''$ West 600.00 feet;
Thence North $38^{\circ} 34' 10''$ West 160.00 feet, more or less to the West line of the Northeast quarter (NE 1/4) of Section 29;
Thence along the West line of said Northeast quarter (NE 1/4), North $0^{\circ} 05' 25''$ East 125.00 feet to the place of beginning;

EXCEPT any portion lying Westerly of the following described line:

LINE DESCRIPTION:

BEGINNING at the Southwest corner of the Southeast quarter (SE 1/4) of said Section 20;
Thence along the West line of said Southeast quarter (SE 1/4), North $0^{\circ} 07' 56''$ East (North $0^{\circ} 04' 25''$ East recorded) 270.00 feet;
Thence along the Northwesterly line of the above described property North $59^{\circ} 48' 56''$ East (North $59^{\circ} 45' 25''$ East recorded) 132.06 feet to the POINT OF BEGINNING;
Thence South $0^{\circ} 07' 56''$ West 77.76 feet to the Point of Curvature of a tangent curve to the left, having a central angle of $23^{\circ} 22' 56''$ and a radius of 1,055.92 feet;
Thence Southeasterly along said curve an arc distance of 430.92 feet to a POINT OF TANGENCY;
Thence South $23^{\circ} 15' 00''$ East 89.45 feet to the POINT OF ENDING in the South line of the above described property;

Exhibit B

RECORDING REQUESTED BY
City of Phoenix, City Clerk
200 West Washington St, 15th Floor
Phoenix, AZ 85003

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20100330379 04/20/2010 02:20
ELECTRONIC RECORDING

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ramirezp

Space above this line for recorder's use only

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AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

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6/29/2009 08:54 AM

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

This Amended and Restated Intergovernmental Agreement (this "Agreement") is entered into by and between the signatories below for the purpose of establishing the Regional Wireless Cooperative ("RWC"). Unless specifically defined in the main body of this Agreement, all capitalized terms used herein shall have the meanings set forth in the Regional Wireless Cooperative Governance Document attached hereto as Exhibit A.

Recitals

Whereas, by May 22, 2009, the following fourteen (14) entities were signatories to the original IGA and Exhibit A ("Initial Parties"): City of Avondale, City of Chandler, Daisy Mountain Fire District, City of El Mirage, City of Goodyear, Town of Guadalupe, City of Maricopa, City of Peoria, City of Phoenix, Sun City Fire District, Sun City West Fire District, Sun Lakes Fire District, City of Surprise, and the City of Tempe; and

Whereas such Initial Parties became Members of the RWC; and

Whereas each Member had appointed their respective representatives to the RWC Board of Directors; and

Whereas the RWC Board of Directors, at its May 22, 2009 meeting unanimously approved amending and restating the original IGA and Exhibit A, dated October 1, 2008, to permit personal property ownership, including ownership of frequencies, where required by a Member or potential Member for purposes of obtaining adequate financing in order to join the RWC or remain a Member thereof; and

Whereas, the RWC Board of Directors, at its June 26, 2009 meeting approved the amendments to the original IGA and Exhibit A;

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Parties. The Parties (individually, a "Party") to this Agreement consist of all of the signatories to this Agreement. Parties to this Agreement shall automatically become Members of the RWC, as detailed in Exhibit A.

2. Agreement.

2.1. The Parties enter into this Agreement for the purpose of:

2.1.1. Using their best efforts, through cooperation and pooling of common resources, for the mutual benefit of all Parties to use, own, operate, maintain and improve a regional radio communications network.

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- 2.1.2. Planning, designing, constructing, operating, maintaining and financing the Regional Wireless Cooperative Network.
- 2.1.3. Providing regional communications operability and interoperability.
- 2.1.4. Providing regional communications cost effectively and using economies of scale.
- 2.1.5. Providing communications interoperability with other jurisdictions that are not a Party to this Agreement, for the benefit of all Parties.

2.2. The Parties are authorized to enter into this Agreement by the joint exercise of powers provisions of Title 11, Chapter 7, Article 3 (§§ 11-951 et seq.), Arizona Revised Statutes and the authorization of their legislative or other governing bodies.

2.3. The Parties agree to form the Regional Wireless Cooperative, an unincorporated association of the Parties, to jointly and cooperatively exercise their powers to achieve the purposes specified in paragraph 2.1.

2.4. The rules and policies governing the regulation and management of the Regional Wireless Cooperative's internal affairs are set forth in a governance document, which is attached to this Agreement as Exhibit A and incorporated herein by this reference. Certain terms that are defined in Exhibit A are used in this Agreement. Those terms shall have the same meaning in this Agreement as such terms are defined in Exhibit A.

2.5. It is the intention of the Parties that Exhibit A be enforceable to the same extent as this Agreement. Exhibit A shall be subject to amendment as provided herein and shall be valid for the duration of this Agreement. Exhibit A is approved by all Initial Parties and shall be binding upon any Parties that are admitted after the Initial Parties. No additional Parties shall be admitted to the Regional Wireless Cooperative without first agreeing to be as bound by Exhibit A as are the Initial Parties.

2.6. It is the intention of the Parties that the RWC shall have the right to use, manage, upgrade, change, and configure the Network as a whole, regardless of individual or joint ownership of assets and frequencies.

3. Term and Duration of Agreement; Dissolution.

3.1. This Agreement shall be binding upon each signing Party, and among and against all signing Parties as of the date on which the Agreement has been executed by each such Party, so long as such Party has complied with the requirements of A.R.S. § 11-952, which includes appropriate action by the legislative or other governing body of the Party for the approval of the Agreement, determination by the Party's attorney that the Agreement is within the powers and authority of the Party, and the proper filing of the Agreement. In order for this Agreement to have legal effect, at least two (2) Parties must sign it. The "Effective Date" of this Agreement is October 22, 2008. The initial term of this Agreement shall begin on that date and end on October 31, 2018; thereafter, the Agreement will automatically renew for terms of ten (10) years. Notwithstanding the foregoing, this Agreement shall automatically

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terminate upon dissolution of the Regional Wireless Cooperative.

3.2. The Parties do not anticipate that the Regional Wireless Cooperative will be dissolved until it is no longer desirable and feasible for the Regional Wireless Cooperative to operate the Network or the Network is transferred to another governmental or non-profit entity.

3.3. If the Parties dissolve the Regional Wireless Cooperative other than by transferring the Network to a governmental or non-profit entity, the assets of the Regional Wireless Cooperative shall be returned to the Members in proportion to their contributions to the Regional Wireless Cooperative as determined in section 4.3 of Exhibit A. In the event of dissolution, real property that is owned separately by a Member, regardless of whether it is situated within a Member's boundaries or installed at a Member-owned communications facility shall be returned to such Member and credited to the Member's share of the assets to be returned. Real property purchased or owned separately by a Member shall remain the sole and separate property of that Member and shall not become the property of the Regional Wireless Cooperative. Real property that was purchased by the Regional Wireless Cooperative is owned by the Members of the Regional Wireless Cooperative in proportion to their financial contributions to such purchase, regardless of whose name title is in.

3.4. Radio frequencies shall be dealt with in accordance with FCC licensing regulations. Each Member must ensure that its individually-owned frequency licenses are kept current.

4. Manner of Financing.

4.1. The cost of planning, designing, constructing, operating and maintaining the Network shall be paid in the manner specified in Exhibit A. An infrastructure replacement and enhancement program and an annual operating and maintenance budget shall be established and maintained as provided in Exhibit A. The costs paid by the Parties are expected to be the total costs for planning, designing, constructing, operating and maintaining the Network, less amounts, including grants and gifts, received from federal, state, regional or other funding sources.

4.2. Each Party agrees to timely pay its share of the cost of planning, designing, constructing, operating and maintaining the Network as specified in Exhibit A. Each Party shall render its amounts payable to the Regional Wireless Cooperative no later than forty-five (45) days from the invoice date. The Regional Wireless Cooperative may collect interest at the rate of one percent (1%) per month for payments not received forty-five (45) days from the invoice date. The interest collected shall be deposited in the operating and maintenance budget and used to offset the costs of operation and maintenance.

4.3. It will be the responsibility of each Party to this Agreement to take the appropriate steps in conformity with state or local laws to ensure that it appropriates sufficient funds to cover the obligations it assumes under this Agreement. Each Party recognizes that the performance by the Parties under this Agreement may be dependent upon the appropriation of funds by that Party. Should any Party fail to appropriate the necessary funds, that Party

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may withdraw from this Agreement on the last day of the fiscal period for which funds are legally available, notwithstanding Section 6. Each Party agrees to give notice to the other Parties as soon as reasonably possible after the unavailability of funds comes to the Party's attention.

4.4. Each Party understands and acknowledges that claims and lawsuits may be filed for damages resulting from acts or omissions in connection with planning, designing, constructing, operating, maintaining financing, and cooperative ownership of the Network or that other unforeseen costs and expenses may be incurred in connection with the planning, designing, constructing, operating, maintaining, financing, and cooperative ownership of the Network.

The Parties agree that all damages, costs and expenses not specifically provided for in this Agreement, shall be shared by the Parties in proportion to each Party's share of the total weighted votes, in accordance with Section 3.2.1.3.2 of Exhibit A, at the time the claim or lawsuit, whichever first occurs, claim or lawsuit is first served on any Party or the unforeseen costs or expenses were incurred. Notwithstanding the foregoing, each Party shall be solely and separately responsible for its own gross negligence and willful misconduct, without joint liability by other Parties. Each Party shall promptly notify the Regional Wireless Cooperative and the Administrative Managing Member upon receipt of a claim or lawsuit relating to the Network. The Administrative Managing Member shall take the lead role on behalf of the Regional Wireless Cooperative in coordinating the investigation and defense of any claim or lawsuit made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Nothing in this section shall preclude any Party, at its expense, from providing its own legal counsel in connection with any claim or lawsuit made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Claims and lawsuits include any claims, losses, liability, costs, or expenses (including reasonable attorney fees) (hereinafter collectively referred to as "Claims"), arising out of bodily injury of any person (including death) or property damage.

With regard to claims or lawsuits arising out of the ownership or maintenance of a Party's owned or leased real property, such Party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other Parties (as "Indemnitees") from and against any and all Claims and Lawsuits, but only to the extent that such Claims and Lawsuits which result in vicarious/derivative liability to the Indemnitees are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. The Board and Administrative Managing Member shall not be liable for any loss or claim arising out of, based upon or attributable to any other Party's failure or omission in effecting or maintaining adequate insurance on such Party's owned or leased property.

4.5. The Regional Wireless Cooperative with the approval of its Board of Directors may apply for such federal, state or other grants as are made available for the planning, designing, constructing, operating, maintaining and financing the Network. The Executive Director or a Network Managing Member may submit the grant application on behalf of the Regional Wireless Cooperative in accordance with applicable laws, rules, regulations and procedures.

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The grant agreement to be entered into by the Regional Wireless Network and the Grantor shall be incorporated and made a part of this Agreement, and each Party agrees to be bound by the terms and conditions of the grant and to comply with and enforce the grant provisions within the limits of its jurisdiction. Any grant funds received will be used to reduce the cost of the project for which a grant application was submitted. The application for or the award of a grant shall not relieve a Party of its obligation to pay costs billed by the Regional Wireless Cooperative as provided in this Agreement. The Regional Wireless Cooperative shall credit grant funds to the Parties, in proportion to the amount of funding each Party contributes towards the grant project, as the grant funds are received.

4.6. Any Party that intends to individually submit a grant application that may benefit the Regional Wireless Cooperative or the Network shall first submit its proposal and grant application to the Regional Wireless Cooperative for its recommendation. With approval of the Board of Directors, the Party may submit its application to obtain the grant funding. Acceptance and use of any grant funds so obtained for the Regional Wireless Cooperative and the Network is subject to the discretion and use of the Board of Directors. A Party who applies for, is awarded, and accepts grant funds under this paragraph 4.6 is individually responsible for meeting all terms, conditions and obligations of the grant. The Regional Wireless Cooperative shall credit any grant funds received pursuant to this paragraph 4.6 to all Parties, in proportion to the amount of funding each Party contributes towards the grant project as the grant funds are received.

4.7. The Regional Wireless Cooperative's Board of Directors shall use the Administrative Managing Member's procurement procedures and insurance procurement procedures.

4.8. Risk Management. The Regional Wireless Cooperative's Board of Directors shall consult with the Administrative Managing Member to determine the insurance coverage appropriate to protect the Parties from risks concerning the Regional Wireless Cooperative and the Network. The Board of Directors shall direct the Administrative Managing Member to obtain such insurance on behalf of the Regional Wireless Cooperative. In deciding what insurance coverage and indemnities are appropriate, the Board of Directors may elect to self-insure for all or a portion of the risks, or if feasible and with the agreement of the Administrative Managing Member, to place the cooperative and network under the Administrative Managing Member's insurance/self-insurance program. The cost of any insurance and/or self-insurance provided under this section shall be shared by the Parties in accordance with sections 4.2.1 and 4.2.2 of Exhibit A. For the sole purpose of placing coverage for the RWC and Network under the Administrative Managing Member's insurance/self-insurance program, if so directed by the Board of Directors, the Administrative Managing Member agrees to indemnify and defend the RWC and Network for the shared liabilities and costs set forth in Section 4.4 herein, subject to the exceptions set forth in Section 4.4.

4.9. The Parties understand and acknowledge that certain Network equipment, hardware, software and other personal property that is held jointly and owned in common by the Parties will become in time unfit or unnecessary for use by the Regional Wireless Cooperative. To

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provide for the disposal of such surplus Network personal property during the term of this Agreement, each Party agrees to obtain from its legislative or other governing body by ordinance, resolution or other applicable legal action, as necessary, appropriate authorization enabling the Regional Wireless Cooperative to dispose of or sell by public auction, sealed bids, or negotiation any and all surplus Network personal property.

5. Ob ligations as Members. Each Party to this Agreement shall be a Member of the Regional Wireless Cooperative and shall comply with and be subject to the obligations of Members as set forth in Exhibit A, including the obligation to contribute to the cost of the Network. This Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law.

6. Volun tary Termination or Withdrawal as Members. Any Member may voluntarily terminate its participation in the Regional Wireless Cooperative by providing twenty-four (24) months' prior written notice to the other Members. The Regional Wireless Cooperative Board of Directors will work with the withdrawing Member and remaining Members to determine cost and operational impacts of the withdrawal. Subject to the conditions below, the withdrawing Member retains rights to real property, personal property and frequencies as defined by the Agreement and as allowable by State and Federal law and/or regulation. Members voluntarily terminating their participation in the Regional Wireless Cooperative must comply with the following:

- A. Transfer or relinquish to the Regional Wireless Cooperative any unexpended infrastructure replacement and expansion program funds and operating and maintenance funds.
- B. Pay all fees and charges owed to the Regional Wireless Cooperative through the effective date of termination.
- C. Agree to any additional or alternative terms and conditions reasonably related to essential Network operations as mutually determined by the Members, including terms relating to the continuing use of radio frequencies, real property, and personal property.
- D. Agree to pay for all costs to effect the withdrawal of the Member including costs to reconfigure the Network for the remaining Members.

7. Add itional Parties. Other cities, towns, counties, and Indian communities and other public agencies, as that term is defined by A.R.S. § 11-951, shall become additional Parties to this Agreement and shall be bound by the terms of this Agreement at such times as those public agencies are admitted as Members of the Regional Wireless Cooperative.

8. F ailure to Pay Financial Obligation.

8.1.I f a Party is relieved from payment of its financial obligation to the Regional Wireless Cooperative as a matter of law, then the Regional Wireless Cooperative may suspend the

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Party's right to vote and participate in the affairs of the Regional Wireless Cooperative until such time as the Party has paid the difference between the Party's share of the costs and the amount the Party has paid for such costs.

8.2.Except as provided in paragraph 8.1, if a Party fails to pay a financial obligation within forty-five (45) days of the invoice date and then, upon notice by the Administrative Managing Member of the deficiency, fails to cure the non-payment within forty-five (45) days of the date of the deficiency notice, the Regional Wireless Cooperative shall suspend the Party's right to vote and participate in the affairs of the Regional Wireless Cooperative until such time as the Party has paid the difference between the Party's share of the costs and the amount the Party has paid for the costs.

9. Open Meeting Law. The Regional Wireless Cooperative, including the Board of Directors and the Executive Committee shall comply with A.R.S. §§ 38-431, et seq. (Arizona Open Meeting Law) in conducting meetings to the extent the Law is applicable.

10. Records; Confidentiality.

10.1. The Regional Wireless Cooperative shall comply with A.R.S. §§ 39-121 et seq. (Arizona Public Records Law) in maintaining and providing access to the records of the Regional Wireless Cooperative.

10.2. The Regional Wireless Cooperative shall make its financial records regarding the planning, designing, constructing, operating, maintaining and financing the Network available to any official or agent of a Party to this Agreement. Such request for inspection shall not be made more frequently than once a month.

10.3. Each Party to this Agreement agrees to make available to the Regional Wireless Cooperative its financial records related to planning, designing, constructing, operating, maintaining and financing the Network. Such request for inspection shall not be made more frequently than once a month.

10.4. To the extent permitted by law, the Parties shall treat Network information as proprietary and confidential. Network information includes, but is not limited to, technical data, engineering details, construction documents, equipment lists, programming configurations, and operational procedures. Any Party who receives a request for information or a public records request concerning the Network shall initially and immediately notify the Executive Director of such request before following any customary internal practices or procedures with regard to such request.

11. Conflict of Interest. The Parties understand and acknowledge that this Agreement may be subject to cancellation under A.R.S. § 38-511 (Arizona's public employee conflict of interest law) in the event there is a conflict of interest of the type specified in A.R.S. § 38-511 by persons significantly involved in initiating, negotiating, securing, drafting or creating this Agreement.

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12. Compliance with Applicable Laws. Each Party shall comply with all applicable laws, statutes, ordinances, executive orders, rules, regulations, standards, and codes of federal, state and local governments whether or not specifically referred to in this Agreement.

13. Cooperation.

13.1. The Parties agree to make, sign and deliver all documents and to perform all acts that are necessary to fully carry out the terms of this Agreement. Each of the Parties shall fully cooperate with and assist one another in obtaining all licenses, permits, authorizations, approvals and consents required in or related to the performance of this Agreement. This obligation includes performing an act that is not specifically referred to in this Agreement, so long as the obligation to perform such act is reasonably implied by the terms of this Agreement. Nothing in this Agreement shall be construed or interpreted to require the Regional Wireless Cooperative to be responsible for dispatching or otherwise causing its Members to respond to an event within another Member's jurisdiction.

13.2. In the event any legal proceeding is instituted challenging the authority and power of any of the Parties to execute this Agreement or to perform its terms and conditions, the Parties shall, in good faith, jointly and cooperatively defend the validity of this Agreement.

13.3. The Parties may elect and shall have the right to seek specific performance, where feasible and practicable, by any Party of any or all of the obligations (except payment obligations) set forth in this Agreement. The Parties agree that, in accordance with Section 18.3 herein, specific performance may be sought by way of special action filed in superior court seeking an injunction ordering the Party to perform its obligations under this Agreement. The Parties agree not to raise as a defense the position that there is an "adequate remedy at law." The Parties hereby stipulate and consent to the jurisdiction of the superior court in any such special action.

14. Amendment.

14.1. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the Parties.

14.2. This Agreement, including Exhibit A, may be amended by one of the following two procedures:

14.2.1. RWC-Legislative Procedure. A proposed amendment to this Agreement, including Exhibit A, shall be submitted for approval to the Regional Wireless Cooperative's Board of Directors. Upon approval of the Board of Directors, each Party shall take appropriate steps in conformity with state and local law to authorize and approve the proposed amendment.

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14.2.2. Formal Addendum Procedure. A proposed amendment to this Agreement, including Exhibit A, shall be presented to each Party in the form of an addendum, and, if approved by the Board of Directors, each Party will take appropriate steps in conformity with state and local law to authorize and approve the amendment.

14.3. Each Party shall file a copy of the appropriate resolution, ordinance or other recorded action by which its legislative or governing body approved the amendment with the Executive Director of the Regional Wireless Cooperative.

15. Existing and Future Agreements.

15.1. The Parties agree that the provisions of this Agreement shall be incorporated in any existing or future subcontracts between the Parties and any other person, political subdivision or public agency that contracts with the Parties to make use of the Network.

15.2. The Parties agree that they will not enter into subcontracts for the use of the Network without the prior approval of the Board of Directors, which shall have the authority to review the subcontracts for conformity with the rights and obligations set forth in this Agreement.

15.3. The Parties agree that this Agreement is a modification of all existing agreements between the Parties in regard to the Network. In the event of any conflict, inconsistency, or incongruity between the provisions of this Agreement and any of the provisions of any previous agreement between the Parties, the provisions of this Agreement shall in all respects govern and control.

15.4. Nothing in this Agreement shall be construed or interpreted:

15.4.1. To supersede prior existing mutual aid agreements or radio support agreements between or among the Parties.

15.4.2. To prohibit a Party from entering into separate agreements after the Effective Date of this Agreement concerning real estate, buildings and structures, and towers that the Party owns, leases, or licenses and that the Party authorizes and allows the Regional Wireless Cooperative to use as part of the Network, provided the separate agreements are consistent with this Agreement and compatible with the Regional Wireless Cooperative's use of the property for the Network.

15.4.3. To supersede prior existing agreements concerning real estate, buildings and structures, and towers that the Party owns, leases, or licenses and that the Party authorizes and allows the Regional Wireless Cooperative to use as part of the Network.

15.5. This Agreement is entered into for the sole and exclusive benefit of the Parties, and no other person shall claim any implied right, benefit or interest in this Agreement. The Parties do not intend to create rights in or remedies to any third party as a beneficiary of this

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Agreement or of any duty, obligation, or undertaking established under this Agreement.

16. Notices.

16.1. Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing unless otherwise specified herein and deposited in the U.S. mail, postage prepaid, registered or certified mail, return receipt requested.

16.2. Notice shall be deemed received five (5) days after the Notice is deposited in the U.S. mail as provided above. Any time period stated in a Notice shall be computed from the time the Notice is deemed received.

16.3. Any Party may change its mailing address or the person to receive Notice by notifying the other Parties as provided in this section. Routine notices shall be sent as provided in this Agreement.

17. Default And Cure.

17.1. Each Party agrees that it will perform all duties and obligations agreed to be performed by it under the terms and conditions of this Agreement, and that the unexcused failure of the Party to perform its duties and obligations shall constitute a default under this Agreement. In the event of a payment default by a Party, the Executive Director shall give written notice of the default, specifying the existence and the nature of the default. The defaulting Party shall have ten (10) days to remedy the default by making due payment. In the event of any performance default by a Party, the Executive Director shall give written notice of the default, specifying the existence and the nature of the default. The defaulting Party shall have thirty (30) days to remedy the default by rendering the necessary performance. In the event that the defaulting Party disputes an asserted default, the Party shall perform the disputed obligation, including making payment, but may do so under protest. The protest shall be in writing, and shall precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. After performance of the disputed obligation under protest, the Party disputing the asserted default shall have the right to submit the dispute to the Regional Wireless Cooperative's Board of Directors for a recommendation on a non-binding resolution under paragraph 18.

17.2. Notwithstanding the provisions of paragraph 17.1, in the event a Party disputes an amount billed, it shall do so in writing to the Executive Director within forty-five (45) days after the invoice date. The Party shall pay the disputed amount, but may do so under protest. The protest shall be in writing, and shall accompany the disputed payment if not previously paid and shall specify the reason upon which the protest is based. After the protest has been filed and the disputed amount has been paid, the dispute shall be handled in accordance with the dispute resolution process specified in paragraph 18. Payments not made under protest shall be deemed to be correct. If a protest is not filed within forty-five (45) days of the invoice date, the Party waives its right to file a protest.

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17.3. If a Party fails to cure a default within the time frames specified in 17.1, that Party will no longer be in "Good Standing," as defined in Exhibit A, and shall lose voting privileges as specified in paragraph 3.2.1.3 of Exhibit A. If the Party is still in default after six (6) consecutive months, the Board of Directors has the right to define additional cures up to and including expulsion from the RWC.

18. Alternative Dispute Resolution.

18.1. If any dispute, complaint or controversy, including a protest made pursuant to paragraph 17.1 or 17.2, ("dispute") arises between or among the Parties under this Agreement, the Parties agree that the dispute shall be brought to the Regional Wireless Cooperative's Board of Directors for non-binding dispute resolution. The Board of Directors shall establish appropriate and prompt procedures to govern the processing of complaints and the internal dispute resolution process. If a Party disagrees with the Board of Directors' recommendation, the Party may pursue the remedies otherwise provided for in this Agreement or provided at law.

18.2. The Parties agree that notwithstanding the existence of a dispute between or among the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations that are required of it and that are not related to the dispute. The Parties agree that at any point in the internal dispute resolution process, the Board of Directors may adopt and impose an interim emergency remedy to ensure the continuation of essential communication services until the dispute is resolved.

18.3. This Agreement shall not be construed or interpreted to prohibit a Party from seeking injunctive relief for the preservation of real property.

18.4. In the event a dispute is not resolved pursuant to paragraph 18.1, the Parties agree to use arbitration to the extent required under A.R.S. § 12-133 and A.R.S. § 12-1518.

19. Waiver. The waiver by any Party of any breach of any term, covenant or condition of this Agreement shall not be deemed a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition of this Agreement.

20. Performance and Uncontrollable Events.

20.1. All terms and conditions that are to be performed by the Parties or any of the Parties shall be performed at the sole expense of the Party so obligated, and if any other Party pays any sum of money or does any act that requires the payment of money by reason of the failure, neglect or refusal of the obligated Party to perform such term or condition, the sum of money paid by the other Party shall immediately be payable to the other Party by the Party obligated to perform.

20.2. No Party shall be considered to be in default in the performance of any obligations under this Agreement (other than obligations of a Party to pay costs and expenses) if failure

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of performance is due to an uncontrollable event. The term "uncontrollable event" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage and restraint by court order or public authority, that by exercise of due diligence and foresight the Party reasonably could not have been expected to avoid and that by exercise of due diligence it will be unable to overcome. A Party that is rendered unable to fulfill any obligation by reason of an uncontrollable event shall exercise due diligence to remove such inability with all reasonable dispatch.

20.3. If any Party claims that its failure to perform was due to an uncontrollable event, the Party shall bear the burden of proof that such activity was within the meaning and intent of this section, if such claim is disputed by any Party to this Agreement.

21. Assignment and Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. No assignment shall be allowed without the prior written consent of the Board of Directors.

22. Entire Agreement. This Agreement, including Exhibit A, contains the entire agreement and understanding among the Parties regarding the formation, governance and operations of the Regional Wireless Cooperative, and supersedes and replaces all related prior negotiations, agreements and proposed agreements, written or oral regarding its contents and purpose, subject to the exceptions noted in Section 15.4. Each Party acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained in this Agreement and acknowledges that this Agreement has not been executed in reliance on any promise, representation or warranty not contained in this Agreement. This Agreement shall not be amended, modified or supplemented at any time unless in writing.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts executed and intended to be performed entirely within the State of Arizona by residents of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision therefore shall be instituted only in the courts of Maricopa County, Arizona.

24. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, the provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the Parties to obtain the practical benefits of the Network. If any law or court of competent jurisdiction prohibits or excuses any Party from undertaking any contractual commitment to perform any act under this Agreement, this Agreement shall remain in full force and effect, but the provisions requiring such action shall be deemed to permit the Party to take such action at its discretion, if such a construction is permitted by law. This section shall not limit the discretion of the Parties to suspend a Party's right to vote and participate in the affairs of the Regional Wireless Cooperative as provided in section 8, entitled Failure To Pay Financial Obligation.

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25. Headings. Section headings are inserted in this Agreement solely for convenience and the section headings shall not by themselves alter, modify, limit, expand or otherwise affect the meaning of any provision of this Agreement.

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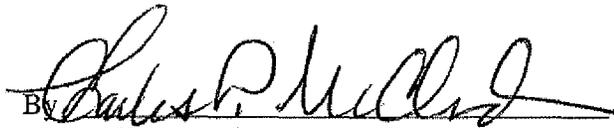
Intergovernmental Agreement
Amended and Restated

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

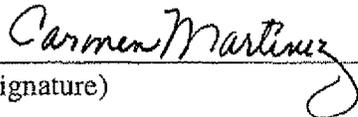
For City of Avondale
City/Town/Agency Name

Date September 22, 2009

By 
(Signature)

Charlie P. McClendon, City Manager
Printed Name and Title

ATTEST:


(Signature)

Carmen Martinez, City Clerk
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

c 
(Signature)

Andrew J. McGuire, City Attorney
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK **124822-BUC**

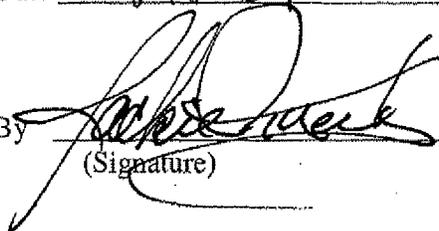
Intergovernmental Agreement
Amended and Restated

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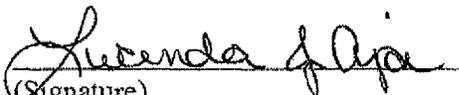
For Town of Buckeye
City/Town/Agency Name

Date 8-18-09

By 
(Signature)

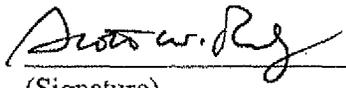
Jackie Ameky, Mayor
Printed Name and Title

ATTEST:


(Signature)

Luenda J. Aja, Town Clerk
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.


(Signature)

Scott W. Peby, Town Attorney
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-CHA
Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For City of Chandler
City/Town/Agency Name

Date 1/29/2010

By [Signature]
(Signature)

Bonnie Dunn, Mayor
Printed Name and Title

ATTEST:

[Signature]
(Signature)

Marla Paddock, City Clerk
Printed Name and Title



APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

[Signature]
(Signature)

Mary Wade, City Attorney
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-DAI
Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For Daisy Mountain Fire District
City/Town/Agency Name

Date 8/24/09

By [Signature]
(Signature)

Brian V. Moore, Board Chair
Printed Name and Title

ATTEST:

[Signature]
(Signature)

Wyatt E. Wong Board Treasurer
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

[Signature]
(Signature)

Nicolas J. Cornelius, Esq.
Printed Name and Title
Counsel to Daisy Mountain
Fire District.

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-ELM

Intergovernmental Agreement
Amended and Restated

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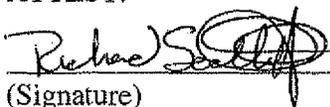
For City of El Mirage
City/Town/Agency Name

Date 8/27/09

By 
(Signature)

FREDERICK V. WATERMAN MAYOR
Printed Name and Title

ATTEST:


(Signature)

Richard Saathoff, City Clerk
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.


(Signature)

RICHARD A. FLAABEN, CITY ATTORNEY
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-GOO
Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For City of Goodyear
City/Town/Agency Name

Date August 17, 2009

By John F. Fischbach
(Signature)

John F. Fischbach, City Manager
Printed Name and Title

ATTEST:

^{mp} Susan Rogers Lynn Mulhall
(Signature)

Lynn J. Mulhall, City Clerk
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

Susan Rogers
(Signature)

Susan Rogers
Assistant City Attorney
Printed Name and Title



AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-GUA
Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For Town of Guadalupe
City/Town/Agency Name

Date 9-10-09

By Alma Y. Solarez
(Signature)

Alma Y. Solarez / Mayor
Printed Name and Title

ATTEST:

Rose Mary Arellano
(Signature)

Rose Mary Arellano
Printed Name and Title Town Clerk

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

David E. Ledyard
(Signature)

David E. Ledyard
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE THE REGIONAL WIRELESS COOPERATIVE NETWORK **124822-MAR**
Intergovernmental Agreement Amended and Restated

26. **Counterparts.** This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," may be signed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For CITY OF MARICOPA
City/Town/Agency Name

Date 4/6/2010

By [Signature]
(Signature)

Anthony Smith, Mayor
Name and Title



ATTEST:
[Signature]
(Signature)

Vanessa Bueras / City Clerk
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

[Signature]
(Signature)

Denis M. Fitzgibbons
Printed Name and Title City Attorney

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-PEO
Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For CITY OF PEORIA
City/Town/Agency Name

Date 9-21-2009

By Susan Thorge
(Signature)

Carl Swenson, City Manager
Printed Name and Title

ATTEST:

Mary Jo Kief
(Signature)



Mary Jo Kief, City Clerk
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

(Signature)

Stephen M. Kemp
Stephen M. Kemp, City Attorney
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-PHO
Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For City of Phoenix
City/Town/Agency Name

Date October 16, 2009

By *Alfon Washington*
(Signature)

Alfon Washington, Assistant City Manager
Printed Name and Title

ATTEST:
Mario Paniagua
(Signature)



City Clerk
Mario Paniagua 4/20/10
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

Stephen L. Wetherell
(Signature) **ACTING City Attorney**
R.F.

Stephen L Wetherell, Asst Chief Counsel
Printed Name and Title

CITY CLERK DEPT.
2010 APR 20 AM 11:09

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

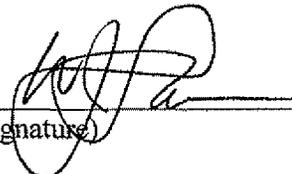
124822-SCO
Intergovernmental Agreement
Amended and Restated

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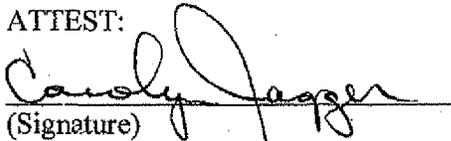
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For Scottsdale
City/Town/Agency Name

Date 10-22-09

By 
(Signature)

W.I. "Jim" Lane, Mayor
Printed Name and Title

ATTEST:

(Signature)

Carolyn Jagger, City Clerk
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.


(Signature)

James Bennett, Deputy City Attorney
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-SCF
Intergovernmental Agreement
Amended and Restated

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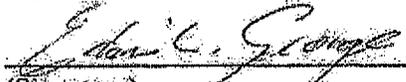
For Sun City Fire District
City/Town/Agency Name

Date October 20, 2009

By 
(Signature)

Irvin S. Mitchell Chairman
Printed Name and Title

ATTEST:


(Signature)

Edwin L. George, Clerk of the Board
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.


(Signature)

Bonnett, Fairbourn, Friedman & Balint PC
Michael N. Widener, Esq.
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK **124822-SCW**

Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For Fire District of Sun City West
City/Town/Agency Name

Date 8-21-09

By G. David Wilson
(Signature)

G. David Wilson SOWPD Board Chair
Printed Name and Title

ATTEST:

William W. Hamel
(Signature)

WILLIAM W. HAMEL BOARD CLERK
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona

Michael N. Widener
(Signature)

Michael N. Widener, Esq.
Printed Name and Title
Bonnett, Fairbourn, Friedman & Balint, P.C.

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-SLF
Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For Sun Lakes Fire District
City/Town/Agency Name

Date August 25, 2009

By *Michael Sellers*
(Signature)

Michael Sellers, Chairman of the Board
Printed Name and Title

ATTEST:
Paul S. Wilson
(Signature)

Paul S. Wilson, Fire Chief
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

(Signature)

DUNNA AVERSA, Attorney
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-SUR

Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For City of Surprise
City/Town/Agency Name

Date 9-30-09

By L. E. Truitt
(Signature)

L. E. TRUITT, Mayor
Printed Name and Title

ATTEST:

Sherry Ann Aguilar
(Signature)

Sherry Aguilar, City Clerk
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.

[Signature]
(Signature)

Manuel D. Babin, City Clerk
Printed Name and Title

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

124822-TEM
Intergovernmental Agreement
Amended and Restated

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in multiple counterparts by their duly authorized officers.

For City of Tempe
City/Town/Agency Name

Date August 20, 2009

By 
(Signature)

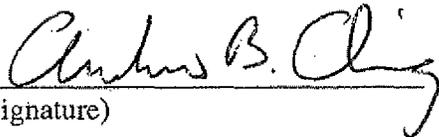
Mayor Hugh Hallman
Printed Name and Title

ATTEST:

(Signature)

City Clerk Jan Hort
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona.


(Signature)

City Attorney Andrew Ching
Printed Name and Title

**EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT**

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**EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT**

I. DEFINITIONS

In this agreement, unless the context otherwise requires, the following terms mean:

Term	Definition
Administrative Managing Member	The Managing Member responsible for the administration and financial management of the RWC.
Alternate Representative	A person designated by a Member to serve as an alternate for a Member's Representative and to have the authority specified in this Agreement.
Annual Membership Fee	Fee paid by all Members to cover the cost of RWC Administrative Services, Network Operations and Maintenance Services, and Network Infrastructure Replacement and Enhancement Projects.
Assets	RWC Assets are as defined in Section 5.
Associate	A non-Member entity that is authorized by the Board of Directors to use the Network to support an existing Member.
Board of Directors	The ruling body of the RWC that is comprised of one representative from each Member.
Capital Investment in the RWC	The amount paid for capital additions, upgrades or replacements for the RWC including real estate, real property and other property jointly purchased by the RWC. It does not include amounts related to real estate, real property and other property, as defined in Section 5 of this Agreement that will continue to be owned by individual Members. It also does not include fees paid by Members that are a Member's share of the operating costs.
Conditional Participant	A non-Member entity authorized by the Board of Directors to temporarily use the Network for special events, tactical situations or emergency circumstances.
Executive Committee	The RWC committee responsible for evaluating all RWC proposals and recommendations prior to submission to the Board of Directors.
Executive Director	The chief administrative officer responsible for coordination of RWC and Network activities.
Fiscal Year	The twelve (12) month accounting period for budgeting and expenditure reporting that commences on the first day of July and ends on the thirtieth day of June.

**EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT**

Good Standing	A Member who attends at least one Board meeting per twelve (12) month period, is current in all fees owed to the RWC, and whose vote is not suspended because the Party is relieved from payment as a matter of law.
Impact Assessment	The evaluation method used to identify the Network modifications and capital investment needed to add a new Member or change how an existing Member uses the Network.
Infrastructure Replacement and Enhancement Fund	The fund of monies set aside from the Annual Membership Fee to fund capital replacements, enhancements, and construction of the Network.
Interoperability	An essential communication link within Public Safety and Public Service wireless communications systems which permits units from two or more different agencies to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results, as defined by the Public Safety Wireless Advisory Committee in a 1996 report to the FCC and NTIA.
Interoperability Participant	A non-Member entity authorized by the Board of Directors to use the Network for the purpose of participating in intermittent interoperable situations or circumstances.
Maintenance Manager	A Member or vendor responsible for providing maintenance for some portion of the Network.
Member	Any entity that executes and becomes a party to the Intergovernmental Agreement to plan, design, construct, operate, maintain, and finance the RWC Network.
Member's Equity	The Member's Equity Percentage of the Net Value of the RWC.
Member's Equity Percentage	A Member's Capital Investment in the RWC expressed as a percentage of the total Capital Investment in the RWC.
Net Value of the RWC	The total assets, minus liabilities of the RWC as reported in the RWC financial statements.

**EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT**

Network	The Public Safety and Public Service communications system that is planned, designed, constructed, operated, maintained, and financed by the RWC, including all real estate, real property and personal property that is purchased or licensed by the RWC or owned or licensed by a Member, and the radio system originally built by the City of Phoenix known as PRWN.
Network Infrastructure Replacement and Enhancement Projects	Projects approved by the Board of Directors to replace, expand, or enhance the Network infrastructure funded through the Annual Membership Fee.
Network Managing Member	The Member or Members who are responsible for the day to day operations of the Network.
Network Maintenance Services	Services provided to the RWC by a Maintenance Manager to ensure physical operation of all or some portion of the Network.
Network Operations Services	Services provided to the RWC by a Network Managing Member to ensure optimal operation of the Network.
Numerical Vote	A vote by Members of the Board of Directors voting on the basis of one vote per Member.
Operations Working Group	A staff working group consisting of representatives of the Members that is assembled by the Executive Director to address Network operational issues.
Parties	All signatories to the Intergovernmental Agreement (IGA) creating the RWC collectively.
Party	Any individual signatory to the IGA creating the RWC.
PRWN	The portion of the combined Network built by the City of Phoenix and known as the Phoenix Regional Wireless Network.
Public Safety	All federal, state, local, and Indian community law enforcement, fire service, emergency management and disaster preparedness agencies.
Public Service	All public works, transportation, and other agencies whose primary responsibility is providing residents with services other than Public Safety services.

**EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT**

Regional Wireless Cooperative	The unincorporated association that was formed by the Parties to jointly and cooperatively plan, design, construct, operate, maintain, and finance the Network.
Representative	The person designated by a Member to act on behalf of the Member on all matters concerning the RWC.
RWC Administrative Services	Services provided to the RWC by the Administrative Managing Member and the Executive Director in the areas of organizational management, accounting and budget, procurement and contracting, legal and all other duties as assigned by the Board of Directors.
Special Assessment	Fee assessed by the Board of Directors to pay the cost of unplanned projects such as disaster recovery, the use of the Network by an Interoperability or Conditional Participant, or system changes or expansions not previously included in the budget. Special Assessments may be charged proportionately or individually and need not be equal among Members.
Subscriber Unit	A voice or data unit in use on the Network (e.g., operating portable, mobile, control station or console). Subscriber Unit shall include a cache radio and a spare radio that has been assigned a valid system ID.
Subscriber Units	The total number of Subscriber Units in use on the Network.
Talkgroup	A defined organizational grouping of radio users who need to communicate with one another.
Weighted Vote	A vote by Members of the Board of Directors voting on the basis of weight according to share of total Subscriber Units as more fully described in Section 3.2.1.3.2.

2. MANAGING MEMBERS

The City of Phoenix ("Phoenix") shall serve as the Maintenance Manager and Network Managing Member responsible for the day-to-day operations and maintenance of the Network. Phoenix shall also serve as the Administrative Managing Member responsible for the day-to-day management of the RWC organization and finances. The RWC may change and/or designate additional Maintenance Managers to maintain specific portions of the Network as appropriate. The RWC may change and/or designate additional Network Managing Members as the Network architecture changes to include specialized components such as county, state or federal sub-systems. Maintenance Managers and Administrative and Network Managing Members will be

**EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT**

reimbursed by the RWC Membership for all costs incurred as a result of performing their respective responsibilities. Management of construction projects and infrastructure added subsequent to this Agreement shall be determined by the Board of Directors.

2.1. Network Managing Member

A Network Managing Member shall have the following duties:

- 2.1.1. Manage and allocate Subscriber Unit identifications and priorities.
- 2.1.2. Manage and allocate Talkgroup identifications and priorities.
- 2.1.3. Collect and report statistical data of Network utilization.
- 2.1.4. Maintain, optimize, and backup Network databases.
- 2.1.5. Operate and maintain the Network and perform any necessary inspections.
- 2.1.6. Identify, track, and resolve Network problems.
- 2.1.7. Establish and maintain a disaster recovery plan.
- 2.1.8. Perform frequency management functions for RWC frequencies issued by the FCC.
- 2.1.9. Implement Board of Directors' policies and procedures.
- 2.1.10. Provide the support staff necessary to perform Network Managing duties.
- 2.1.11. Inform the Executive and Operations Working Groups of Network issues.
- 2.1.12. Perform all other duties as assigned by the Board of Directors.

2.2. Administrative Managing Member

As the Administrative Managing Member, Phoenix shall have the following powers and duties:

- 2.2.1. Appoint an Executive Director, subject to the approval of the Board of Directors.
- 2.2.2. Establish and maintain an accounting and budget system.
- 2.2.3. Collect and disburse monies.
- 2.2.4. Procure general goods and services and professional services for the RWC.
- 2.2.5. Contract with other federal, state, and local agencies as required to carry out the purposes of the RWC.

**EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT**

- 2.2.6. Serve as the contracting authority for the RWC.
- 2.2.7. Apply for and, if awarded, accept grants and gifts on behalf of the RWC.
- 2.2.8. Maintain inventory of all assets owned by and/or used on behalf of the RWC.
- 2.2.9. Provide reports as required by the Board of Directors.
- 2.2.10. Perform all other duties as assigned by the Board of Directors.

2.3. Maintenance Manager

A Maintenance Manager shall have the following duties:

- 2.3.1. Maintain that portion of the Network assigned by the Regional Wireless Cooperative.
- 2.3.2. Comply with all policies and procedures established by the Regional Wireless Cooperative.
- 2.3.3. Provide reports as required by the Board of Directors.
- 2.3.4. Support the Administrative Managing Member and Network Managing Members with information required to develop and manage budgets, inventory and maintenance history.

3. RWC STRUCTURE

The RWC structure for use, operations, maintenance and enhancement to the Network is defined as follows:

3.1. Radio Network Membership and Participants

The various categories of Membership shall be as follows:

3.1.1. Members

The RWC Membership shall be composed of the initial Members and any other entity that is admitted in accordance with Section 3.1.5 of this Agreement. Entity means any city, town, county, state, Indian nation, fire district or other separately constituted public entity. A municipal, county or state agency, department, or division does not constitute a separate entity for Membership purposes. A municipal, county or state agency, department, or division shall be represented by its corresponding city, town, county, state, Indian nation, or separate entity. Each city, town, county, state, Indian nation, fire district or separate entity shall constitute one Member of the RWC.

3.1.2. Associates

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An entity may become an RWC Associate if the entity: (1) is under contract to a Member that uses the Network to provide public safety or public services and is authorized by the Board of Directors to use the Network to support the contracted activities, or periodically supports public safety services with an existing Member; and (2) is compliant with the conditions as set forth by the Board of Directors. Associates have no RWC voting rights or representation on the Board of Directors or the Executive Committee, but may have a representative on the Operations Working Group. Unless directed otherwise by the Board of Directors, fees or costs and weighted votes connected with an Associate's use of the Network shall be assessed to the Member supported by the Associate.

3.1.3. Interoperability Participants

If authorized, and subject to the conditions imposed by the Board of Directors, an Interoperability Participant may use the Network to support existing Members with intermittent interoperable situations. Interoperability Participants shall have no RWC voting rights or representation on the Board of Directors, Executive Committee or Operations Working Group. Unless directed otherwise by the Board of Directors, no fees and costs or weighted votes will be assessed to Interoperability Participants.

3.1.4. Conditional Participants

A non-Member entity may use the Network on a temporary basis for special events, tactical situations or emergency circumstances in support of an existing Member, if authorized by the Board of Directors. Conditional Participants have no RWC voting rights or representation on the Board of Directors, Executive Committee or Operations Working Group. Unless directed otherwise by the Board of Directors, no fees and costs or weighted votes will be assessed to Conditional Participants. In an emergency the Executive Director may authorize the addition of a Conditional Participant, but continuation of the Conditional Participant must be approved or disapproved by the Board of Directors at their next meeting.

3.1.5. Member Admission

Any entity in the Network service and expansion area, as defined by the Board of Directors, may apply for Membership. An applicant shall be admitted as a Member upon occurrence of all the following events:

- Applicant submits a written request for RWC Membership to the Board of Directors;
- Board of Directors approves applicant's written request;
- Applicant enters into an agreement with the RWC that specifies the fees and costs the applicant shall pay to the RWC pursuant to Section 4 of this Agreement;
- Applicant meets all conditions imposed by the Board of Directors; and
- Applicant executes and becomes a party to this Agreement.

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3.1.5.1. Evaluation Factors

The Board of Directors has the sole and absolute discretion to either summarily deny or consider applicants for Membership status. If the Board of Directors elects to consider an application, the RWC will conduct an Impact Assessment to determine costs, risks and benefits to the RWC. The applicant shall pay the cost of the Impact Assessment prior to commencement of the analysis.

After completion of the Impact Assessment, the Executive Director, at the direction of the Operations Working Group, will develop a written recommendation, complete with financial and Network operational impact statements, for Executive Committee review and Board of Directors approval.

The RWC shall evaluate all requests giving the highest priority to maintaining service for public safety. The RWC shall not admit non-public-safety entities if such admittance would compromise the performance of the radio system in addressing public safety. The RWC will evaluate requests for new Membership using the following factors:

- Impact on Network Radio Frequency (RF) coverage;
- Impact on the Network Grade of Service (GOS);
- Interoperability requirements (e.g., extent of wide area roaming for both the existing and new Members);
- Need for additional infrastructure;
- Regulatory constraints;
- Applicant's infrastructure;
- Applicant's user needs assessment;
- Backhaul availability;
- Cost impacts;
- Impact on current operations;
- Roaming impact on existing Members;
- Benefits to the RWC to admit the applicant; and

Additional factors as determined by the RWC.

3.2. RWC Organization

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The RWC organization shall have a Board of Directors, Executive Committee, and an Executive Director. An organization chart of the RWC is attached as Exhibit B.

3.2.1. Board of Directors

The Board of Directors shall set RWC policy, establish funding, approve Membership, and exercise any other authorized powers and duties. The Board of Directors shall act only by formal recorded action.

3.2.1.1.Members

The Board of Directors shall consist of the Representatives of the Members of the Regional Wireless Cooperative.

3.2.1.1.1. Representatives

Each Member is entitled to appoint one person to serve as that Member's Representative and one or more persons to serve as an Alternate Representative. The Member shall rank the Alternate Representatives in the order that they shall serve when the Representative is absent. If the Representative is not present at a meeting, then the Alternate Representative of the Member with the highest rank who is present shall act temporarily in place of the Representative and may exercise all powers of the Representative.

The Member shall notify the Executive Director in writing of the person or persons who serve as that Member's Representative or Alternate Representatives. The appointment is effective when the Executive Director receives the written notice.

The Representative or Alternate Representative(s) shall be vested with the authority to lawfully act on the Member's behalf with respect to the RWC. Each Member shall be bound by the acts of its Representative and/or Alternate Representative(s), and the RWC may rely on the act of a Representative and/or Alternate Representative(s) the same as if such act were done by the Member.

3.2.1.1.2. Removal or Replacement of Representative

A Member may remove or replace its Representative and Alternate Representative at any time by giving written notice to the Executive Director. The removal or replacement of a Representative or Alternate Representative is effective when the Executive Director receives the notice.

3.2.1.2.Meetings

The Board of Directors' shall hold regular meetings monthly, except to the extent that, and for such periods of time as, the Board of Directors shall determine that regular meetings should be held more or less frequently.

3.2.1.2.1. Chair and Vice-Chair

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The Board of Directors shall elect one of its Members as the Chair. The Chair shall be the presiding officer of the Board of Directors and shall have a voice and vote in all Board of Directors' proceedings. The Chair shall serve a two-year term. No Member shall serve two consecutive terms as Chair. The Board of Directors shall elect one of its Members as Vice-Chair, who shall execute the duties of the Chair during the absence or disability of the Chair. During the absence or disability of the Chair and Vice-Chair, the Board of Directors shall elect a presiding officer for the meeting.

3.2.1.2.2. Special Meetings

Two or more Members with approval of the Chair may call a special meeting of the Board of Directors upon a minimum of three (3) working days notice to the other Members. In the event of an emergency, a meeting may be scheduled and noticed with less than three (3) working days notice, provided that a Quorum is present and appropriate notice is given.

3.2.1.2.3. Notice and Agenda

The Executive Director shall prepare the notice, agenda, and minutes of Board of Directors' meetings. A Member may add an item to be considered by the Board of Directors to the agenda by timely notifying the Chair and the Executive Director. The Executive Director shall provide the notice and agenda of a Board of Directors' meeting to each Member with at least as much notice as is given to the public.

3.2.1.2.4. Quorum

A quorum is required to conduct business. To constitute a quorum, a majority of all Members must be present.

3.2.1.2.5. Attendance

Upon approval by the Chair, a Member may attend and participate in a meeting by teleconference or video-conference, and such attendance and participation shall have the same effect as if the Member were present in person.

3.2.1.2.6. Rules

The Board of Directors shall establish rules for its proceedings. An item not specifically covered by the rules established by the Board of Directors or by law shall be decided by the presiding officer using the latest standard edition of Robert's Rules of Order.

3.2.1.3. Voting Methodology

It is contemplated that all Members will strive to promote cooperation and the welfare of the Regional Wireless Cooperative by consensus decision making. Each Member attending a meeting of the Board of Directors is required to vote on all legal matters to be decided by the Board of Directors at that meeting. A voluntary abstention, or a vote excused by applicable

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federal or state conflict of interest laws shall not be counted as a vote, neither affirmative nor negative. Only Members in Good Standing are allowed to vote.

The voting rights of a Member shall be suspended for non-payment of the Member's financial obligations to the Regional Wireless Cooperative, in accordance with the IGA, Section 8, Failure to Pay Financial Obligation. If a Member's voting rights are suspended, this shall not affect the number of Weighted Votes of the other Members or the number of Weighted Votes required to decide a matter. The Weighted Votes of the Member whose voting rights have been suspended shall not be counted as being voted in favor of or against a matter.

3.2.1.3.1. Numerical Voting

All matters shall be decided by a Numerical Vote, provided that any Member may call for a Weighted Vote at any time before or after the Numerical Vote if the call for the Weighted Vote is made before adjournment of the meeting at which the Numerical Vote is taken. A Numerical Vote shall pass by the affirmative vote of a majority of the Members of the Board of Directors present and voting. In case of a tie in votes on any motion, the motion shall be considered lost. If a Weighted Vote is taken, the Numerical Vote shall have no effect unless it is in accord with the Weighted Vote.

3.2.1.3.2. Weighted Voting

Each Member of the Board of Directors shall have the number of Weighted Votes that are calculated in accordance with the following formula: $\text{Weighted Votes} = 100 \times (\text{Total of Member's Subscriber Units} / \text{Total Network Subscriber Units})$. The number of Weighted Votes of each Member shall be recalculated at the beginning of each quarter or whenever a new Member joins the RWC.

A Weighted Vote shall pass by both the affirmative vote of a majority of the Members of the Board of Directors voting and the affirmative vote of Members representing eighty percent (80%) of the Weighted Votes of the Members voting. If the Weighted Vote does not pass, the original Numerical Vote has no effect. A Weighted Vote shall be taken on a roll call basis.

In the event a Weighted Vote does not pass and the Board of Directors is unable to decide the matter despite further discussion and another vote or votes, any Member may call for mediation to attempt to resolve the matter.

3.2.2. Executive Committee

The purpose of the Executive Committee is to provide high level expertise in communications and operations, advise the Board, help direct the efforts of Executive Director and provide intermediate strategic direction for the RWC. The Executive Committee shall review and approve all proposals and recommendations, budget and financial reports, Network performance reports, and Board of Directors meeting agendas prior to submittal to the Board of Directors. The Executive Committee shall have the authority to return proposals and recommendations back to the originator for review and revision. The Executive Committee shall identify for the

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Board of Directors performance issues and recommendations for Network enhancements and construction.

At least one Representative from the Executive Committee shall attend each Board of Directors meeting.

3.2.2.1. Representation

The Executive Committee shall consist of five Representatives appointed by the Board of Directors, plus the Executive Director who will be a non-voting member. Representatives, selected from the RWC Membership, shall consist of: one (1) Police Department executive manager; one (1) Fire Department executive manager; one (1) Municipal executive manager; one (1) Chief Information Officer (or equivalent); and one (1) executive manager from a Network Managing Member. The Executive Committee shall not be comprised of Representatives from only one Member. Every two years the Board of Directors shall review the Executive Committee representation.

3.2.2.1.1. Chair

The Executive Committee shall elect one of its Representatives as Chair. The Chair shall be the presiding officer of the Executive Committee and shall serve a two-year term. The Chair shall not serve two consecutive terms.

The Executive Committee shall elect one of its Representatives as Vice-Chair. The Vice-Chair shall execute the duties of the Chair during the absence or disability of the Chair.

During the absence or disability of the Chair and Vice-Chair, the Executive Committee shall elect a presiding officer for the meeting.

3.2.2.2. Meetings

The Executive Committee will conduct regularly scheduled meetings. These meetings shall be held at least once monthly prior to the Board of Directors' meeting. Two (2) or more Representatives, with the approval of the Chair, may call a special meeting of the Executive Committee upon a minimum of three (3) working days notice to the other Representatives. In the event of an emergency, a meeting may be scheduled and noticed with less than three (3) working days notice, provided that a Quorum is present and appropriate notice is given.

3.2.2.2.1. Quorum

To constitute a quorum, there shall be at least three (3) Executive Committee Representatives present.

3.2.2.2.2. Attendance

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Subject to approval by the Executive Committee Chair, a Representative may attend and participate in a meeting by teleconference or video conference, and such attendance and participation shall have the same effect as if the Representative were present in person.

3.2.2.3. Voting Methodology

A quorum shall be present to conduct business. A majority vote is required to approve any action taken by the Executive Committee.

3.2.3. Executive Director

The Administrative Managing Member, subject to the approval of the Board of Directors, shall appoint an Executive Director to perform RWC administrative duties. The Executive Director will report to the Board of Directors and serve as a non-voting member of the Executive Committee. The Executive Director shall:

- Maintain contact information for all Board of Directors, Executive Committee, and working group representatives;
- Attend all meetings and coordinate efforts of the Board of Directors, Executive Committee, and Operations Working Group;
- Prepare and maintain meeting notices, agendas and minutes for the Board of Directors and Executive Committee and Operations Working Group;
- Manage the overall administrative organizational structure and staffing of the RWC;
- Assemble working groups, in addition to the Operations Working Group, as necessary to address operational and technical issues;
- Prepare and submit to the Executive Committee and the Board of Directors revenue and expenditure budgets and financial reports that follow standard accounting practices;
- Update fee schedules and provide billing and cost recovery services using standard accounting practices;
- Maintain an inventory of all Network infrastructure and real property used on behalf of the RWC;
- Provide monthly Network performance reports;
- Maintain contact information for all Members and Member agencies of the Network;
- Serve as the custodian of records for the RWC and maintain this Agreement and all other records of the RWC, in accordance with the records retention and disposition schedule of the City of Phoenix;

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- Create and annually update a five-year plan for approval by the Executive Committee and the Board of Directors.
- Maintain operating procedures and policies; and
- Perform other duties as directed by the Board of Directors and the Executive Committee.

3.2.4. Operations Working Group

The Operations Working Group shall be responsible for addressing Network operational issues and maintaining Board approved comprehensive policies and procedures for the operation and maintenance of the Network. The Operations Working Group shall review the RWC policies and procedures on an as needed basis, but not less than bi-annually, and shall submit necessary revisions to the Executive Director for Board of Directors' approval.

3.2.4.1. Representation

Each Member may have up to three (3) representatives ("Agency Representatives"), with one (1) Agency Representative each from a Law Enforcement Agency, Fire Services Agency and Municipal Agency. However, each Member may only have an Agency Representative from each agency for which the Member has actual users on the Network. The Agency Representatives will act as liaisons to their respective agencies and are responsible for promptly notifying the Operations Working Group of issues potentially affecting Network operations.

In addition to their respective Agency Representatives, each Network Managing Member will appoint one (1) Network Management and one (1) Maintenance Representative. The Network Management and Maintenance Representatives will provide technical expertise to assist Agency Representatives in making decisions regarding potential actions on the Network.

4. FINANCIAL MANAGEMENT

The Administrative Managing Member, under the direction of the Executive Director, shall be responsible for all financial management responsibilities including, but not limited to, fund management, budget development, rates and fees, Member billing, procurement, financial reporting, and financial audits.

4.1. Budget and Financial Reporting

The Executive Director, in cooperation with the Operations Working Group, shall prepare and present to the Executive Committee, by November of each year, a Preliminary Budget for the subsequent fiscal year, a Five-Year Financial Forecast, and Fund Balance Reports. The Preliminary Budget shall include all operational and maintenance costs, as well as planned capital costs for the upcoming year. The Five-Year Financial Forecast shall include projected revenue, operational and maintenance costs, capital costs, and fund balances for the five (5) years following the Preliminary Budget period. All significant issues and financial assumptions influencing the preparation of these reports shall be detailed and included as a part of the

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presentation. After presentation to the Executive Committee, the Preliminary Budget, Five-Year Financial Forecast, Fund Balance Reports, and the presentation of significant issues and financial assumptions shall be forwarded to the Board of Directors for approval. The Board of Directors shall adopt each subsequent fiscal year's final operational and capital budget by December of the prior fiscal year. The budget approved by the Board of Directors shall be the basis for developing the Annual Membership Fees and Rate Schedule. A copy of the adopted budget shall be provided to all Members.

On a quarterly basis, each Member will receive an Activity Statement for its respective subsidiary accounts.

After the end of each fiscal year, the Executive Director shall submit to the Executive Committee and Board of Directors a summary of financial activity, including a comparison of budgeted expenditures to actual expenditures.

4.1.1. Preliminary Budget

The Preliminary Budget shall include all funding sources, operational and maintenance expenses, as well as planned capital costs for the subsequent year.

4.1.2. Five-Year Financial Forecast

The Five-Year Financial Forecast shall include projected revenues, operational and maintenance expenses, and capital costs for five (5) years following the Preliminary Budget. The Five-Year Financial Forecast will be used to prepare future years' annual budgets.

4.1.3. Fund Balance Report

A Fund Balance Report shall be prepared for the RWC Operating Fund in addition to the Infrastructure Replacement and Expansion Fund. A Fund Balance Report shall provide a projection of annual fund balances through the period covered by the Five-Year Financial Forecast and shall include recommendations regarding the adequacy of the fund balance reserve.

4.1.4. Activity Statements

On a quarterly basis, each Member will receive an Activity Statement for its Infrastructure Replacement and Enhancement Subsidiary Account and, if applicable, its Special Revenue Fund Project(s) Subsidiary Account(s).

Quarterly activity statements for subsidiary accounts associated with the Infrastructure Replacement and Enhancement Fund and the RWC Special Revenue Fund will be prepared and forwarded to each Member for review. The statements will indicate dates and amounts of all payments made into the accounts as well as expenditures charged to the accounts. The statements will also indicated the average daily account balance, the interest rate applied, and the resulting interest earnings or expense added to the account balance.

4.1.5. Year-end Expenditure Reporting

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Year-end Expenditure Reporting shall include an accounting of the actual cost of the operation, maintenance and replacement of the Network compared to budgeted expenditures and fees assessed to Members.

4.2. Funding

The Members shall fund the RWC through Annual Membership Fees, Special Assessments, and grants, as determined by the Board of Directors.

It will be the responsibility of each Member to take the appropriate steps in conformity with the state and local laws to ensure that it appropriates sufficient funds to cover its obligations assumed under this Agreement. Each Member shall encumber its share of the RWC's current year's planned costs no later than July of each fiscal year. Members will advance funds to Administrative Managing Member on a quarterly basis upon receipt of an invoice. Payment of all invoices is due forty-five (45) days from the invoice date. The Administrative Managing Member will transfer funds for its share of the RWC's quarterly planned costs to the RWC operating fund no later than forty-five (45) days after the invoice date.

A late payment charge will be assessed at the rate of one percent (1%) per month for all payments received late. If the Administrative Managing Member does not transfer its share of the cost to the RWC Operating Fund as provided herein, the Administrative Managing Member shall pay interest at the rate of one percent (1%) per month. Interest collected will be deposited into the RWC Operating Fund and be used to offset operating and maintenance costs.

In the event a Member disputes an amount billed, it shall do so in writing to the Executive Director within forty-five (45) days after the invoice date. The Member shall pay the disputed amount, but may do so under protest. The protest shall be in writing, and shall accompany the disputed payment if not previously paid, and shall specify the reason upon which the protest is based. After the protest has been filed and the disputed amount has been paid, the dispute shall be handled in accordance with the dispute resolution terms and conditions outlined in the IGA, Section 17, Default and Cure, and Section 18, Alternative Dispute Resolution. Payments not made under protest shall be deemed to be correct. If a protest is not filed within forty-five (45) days of the invoice date, the Member waives its right to file a protest.

If a Member withdraws from the Network, that Member shall be responsible for all unpaid fees applicable for time of the Member's Membership.

It shall be the responsibility of each Member to bill and collect from its individual users such user charges and cost recovery charges as are required in the payment of the amounts due under this Agreement.

4.2.1. Annual Membership Fee

Each Member agrees to pay an Annual Membership Fee to cover the cost of RWC Administrative Services including allocated insurance premiums, self-insurance costs, costs of claims and lawsuits, Network Operations and Maintenance Services, and Network Infrastructure

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Replacement and Enhancement Projects. The annual amount to be collected shall represent the Board approved operations and maintenance budget for the current fiscal year in addition to the amount approved by the Board for the subsequent year's infrastructure replacement and enhancement projects. The Annual Membership Fee shall be adjusted for any capital funding collected in previous years on behalf of capital projects included in the current fiscal year operating budget. In addition, the Annual Membership Fee shall also include the amount required to maintain the Board approved fund balance reserves in accordance with Section 4.2.1.4.1 and 4.2.1.5.1. Annual Membership Fees shall increase Members' Equity, as established under Section 4.3, only to the extent that funds are deposited in the Infrastructure Replacement and Enhancement Fund.

The cost of purchasing, maintaining and programming Subscriber Units shall be borne solely by the Member owning the Subscriber Units.

Notwithstanding the provisions of this Section 4.2.1 and Section 4.2.1.2, the Board of Directors shall have the discretion to adjust the amount a Member pays as its proportionate share of the Network Operations and Maintenance Services cost if the Board of Directors finds factors or circumstances relating to the provision of operational and maintenance services are such that the formula used to determine the amount the Member pays for Network Operations and Maintenance Services (i.e., an amount proportionate to its Subscriber Units in use on the Network at the time the fee is assessed) results in an unfair or inequitable assessment to that Member or to the other Members.

4.2.1.1. Rate Approval

The Annual Membership Fee rate shall be submitted to the Board of Directors for approval not later than one hundred twenty (120) days prior to the beginning of the fiscal year in which the proposed rates are to be in effect.

4.2.1.2. Payment Basis

The Annual Membership Fee shall be assessed and paid on a quarterly basis. Payments are due to the Administrative Managing Member in the months of July, October, January, and April of each year. The amount each Member shall pay will be proportionate to its Subscriber Units in use on the Network at the time the fee is assessed. Mid-quarter changes in Subscriber Units using the Network will not impact Members' share of costs until the beginning of the next quarter.

4.2.1.3. Interim Adjustments

If at any time during the current fiscal year, the Executive Director reasonably believes the budget used to calculate quarterly fees is grossly inaccurate, the Executive Director may present to the Executive Committee and Board of Directors a new budget. Upon approval by the Board of Directors, the new budget shall be used to recalculate the remaining quarterly fees due in that fiscal year.

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If infrastructure replacement and enhancement projects are advanced or delayed, The Administrative Managing Member may propose interim changes to the quarterly Annual Membership Fee billings.

4.2.1.4. RWC Operating Fund

The portion of the Annual Membership Fee assessed and collected to cover the cost of RWC Administrative Services, Network operations and maintenance, and to maintain the minimum RWC Operating Fund balance, shall be deposited in the RWC Operating Fund. Interest or interest expense will be applied monthly to the RWC Operating Fund based on the average daily balance during the month. The interest rate applied will be the rate earned in the Administrative Managing Member's pooled cash account. Interest earned will be used to offset operating expenses.

4.2.1.4.1. Minimum Balance

Members agree to establish and maintain an operating fund balance reserve equal to twelve and one half percent (12.5%) of yearly budgeted total operation and maintenance costs excluding capital replacement fund charges. The fund balance reserve initially will be established semiannually in the first year and maintained annually thereafter. Each Member's obligation to fund the fund balance reserve shall be proportionate to its Subscriber Units in use on the Network at the time the fee is assessed. Midyear changes in Subscriber Units will not impact a Member's share of the fund balance reserve until the beginning of the next fiscal year. The Board of Directors shall approve any increase or decrease to the fund balance reserve.

4.2.1.4.2. Year-end Settlement

After the end of each fiscal year, the Executive Director shall prepare a settlement of the RWC Operating Fund by comparing fees assessed to actual expenditures paid. If the settlement shows for any Member that actual expenditures exceeded fees assessed, the Board of Directors may authorize the Executive Director to bill the applicable Member for an amount sufficient to cover the shortage. If the settlement shows for any Member that expenditures are less than the fees assessed, the unused fees shall be used to reduce the applicable Member's next quarterly Annual Membership Fee payment.

Amounts owed by or to the Administrative Managing Member as a result of the annual year-end settlement will accrue interest based on the earnings rate in Administrative Managing Member's pooled cash account until the appropriate funds are distributed or paid. Amounts owed by or to the Administrative Managing Member as result of the year-end settlement will be distributable within forty-five (45) days of the acceptance of the annual audit report by the Board of Directors.

4.2.1.5. Infrastructure Replacement and Enhancement Fund

The portion of the Annual Membership Fee assessed and collected to cover Board approved infrastructure replacements and enhancements and to maintain the minimum Infrastructure Replacement and Enhancement Fund balance shall be deposited into the Infrastructure

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Replacement and Enhancement Fund. Subsidiary records for each Member will be maintained. Interest or interest expense will be applied monthly to each subsidiary account based on the average daily balance during the month. The interest rate applied will be the rate earned in the Administrative Managing Member's pooled cash account.

4.2.1.5.1. Minimum Balance

The Members agree to establish the Infrastructure Replacement and Enhancement Fund balance reserve. Each year, the Board of Directors shall establish the Minimum Balance for the Infrastructure Replacement and Enhancement Fund by September 30th, for the following fiscal year. Each Member's obligation to fund the fund balance reserve shall be proportionate to its Subscriber Units in use on the Network at the time the fee is assessed. The Board of Directors shall approve any increase or decrease to the fund balance reserve.

4.2.1.5.2. Approved Uses

The Infrastructure Replacement and Enhancement Fund shall be used only for infrastructure replacements and enhancements approved by the Board of Directors except in the event of a major failure, disaster or force majeure event that necessitates immediate action to restore the Network to operating condition. In such cases, the Executive Director is authorized to withdraw funds. Funds withdrawn under these circumstances shall be reported to the Members at the next Board of Directors meeting for after the fact approval and special assessment, if necessary.

Members agree that expenditures against the Infrastructure Replacement and Enhancement Fund shall not be authorized if they will cause the fund to be in a deficit position at any point in time. If the Infrastructure Replacement and Enhancement Fund is negative at the end of any month, the Administrative Managing Member will immediately bill each Member for an amount sufficient to cover the shortage and to re-establish the required deposit amount. These bills will be faxed to each Member and payments for these billings must be received by the Administrative Managing Member within thirty (30) working days. In such an event, the Administrative Managing Member will re-evaluate the approved budget for the remainder of the year to determine if the quarterly billings should be adjusted.

4.2.2. Special Assessments

The Board of Directors may assess other fees on an as-needed basis to pay the costs of unplanned projects such as disaster recovery, certain extraordinary claims or lawsuits, the use of the Network by an Interoperability or Conditional Participant, or to pay the costs of special projects or system changes and/or expansions not previously included in the budget. Such changes may not benefit all Members in a reasonably proportionate manner. Fees may be assessed proportionately or individually, as approved by the Board of Directors, and need not be equal among Members. Fees collected as a special assessment shall be deposited into a special revenue fund.

4.2.2.1. RWC Special Revenue Fund

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The RWC Special Revenue Fund shall only be used to pay the costs of the projects for which a Special Assessment has been imposed. Subsidiary records for each project will be maintained. Interest will be applied monthly to each project's account based on the average daily balance during the month. The interest rate applied will be the rate earned in the Administrative Managing Member pooled cash account. Interest earned will remain in the project account to finance ongoing expenses associated with the project.

4.2.2.1.1. Settlements

After the project is completed and all related debts have been paid, the Administrative Managing Member shall prepare a reconciliation of the project's subsidiary account by comparing fees assessed and paid to actual expenditures paid. If the reconciliation shows actual expenditures exceeded fees assessed and paid, the Administrative Managing Member will bill the applicable Member(s) for an amount sufficient to cover the shortage. If the reconciliation shows expenditures are less than the fees assessed and paid, the unused fees shall be either refunded or applied as a credit to the applicable Member(s) account(s). When more than one Member is funding a project, billings and refunds will be sent to each Member in accordance with the Board approved funding plan for the project.

4.2.2.2. Applicant Impact Assessment

Each entity considered for Membership shall pay a Special Assessment to cover the cost of developing an Impact Assessment that will address the effect of the request on the existing infrastructure and Members. The Special Assessment shall be paid prior to commencement of the Impact Assessment study.

4.2.2.3. New Member

Each new Member to the RWC shall pay a Special Assessment equal to the full cost associated with providing services to the new Member. The amount to be paid will include the cost to provide service to the new Member's Subscriber Units, any investment in Network infrastructure necessary to increase Network capacity, and other costs deemed necessary to ensure existing Members receive the same services and benefits they received before the new Member joined the Network. The Special Assessment shall be paid in accordance with the terms and conditions established by the Board of Directors as part of the Membership agreement. If the infrastructure that must be purchased for such capacity could ultimately be used to handle additional Subscriber Units beyond the amount requested by the new Member, the new Member may enter into a capacity agreement that provides for reimbursement of a portion of these costs, if and when additional Subscriber Units are brought onto the Network.

4.2.2.4. Existing Member Capacity and Coverage Upgrade

A request from an existing Member expected to impact the Network coverage, capacity and/or performance of other Members will require the existing Member to pay a Special Assessment to cover the cost of an Impact Assessment to determine the impact of the request on the existing infrastructure and Members. Requests requiring a Special Assessment shall include, but are not

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limited to, requests to increase the number of Subscriber Units, Talkgroups, roaming profiles, or coverage individually or cumulatively, by more than ten percent (10%). The Impact Assessment shall determine the cost and benefits of the request and assess the impact on the existing infrastructure including, but not limited to, controllers, base stations, facility capacity, traffic capacity, roaming capacity, microwave/fiber capacity, and overall coverage. The Operations Working Group shall consider such requests upon payment of the Special Assessment and forward their recommendation to the Executive Committee for review and Board of Directors for approval.

4.2.3. Grants

Acceptance and use of grant funds is at the discretion and approval of the Board of Directors. Grant funds acquired on behalf of the RWC will be used to reduce costs for the project for which the grant was applied. The application for or the award of a grant shall not relieve a Member of its obligation to pay, within forty-five (45) days of the invoice date, costs billed in accordance with this Agreement. Grant funds will be credited to each Member in proportion to the amount of funding each Member contributed towards the grant project, as grant funds are received. Grant funds credited to a Member will increase the Members' Equity pursuant to Section 4.3 of this Agreement.

4.3. Members' Equity

The total Members' Equity shall be equal to the Net Value of the RWC as defined in Section 1 of this Agreement. Each Member's Equity will be a proportionate share of the total Members' Equity, as defined in Section 1 of this Agreement. Members' Equity in the RWC will be recalculated when:

- A new Member joins the RWC;
- A major enhancement or expansion is completed;
- At fiscal year-end after each Member's payments into the Infrastructure Replacement and Enhancement Fund are applied, actual expenditures are allocated against each Member's account, and interest is applied to each Member's cash balance.

If a Member brings assets to the RWC and the Board of Directors accepts the assets on behalf of the RWC, the Members' Equity will increase based on the value of the assets at the time of transfer to the RWC.

Assets which are individually owned, as permitted in Section 5 of this Agreement, shall not be counted as part of the Net Value of the RWC, and the Member(s) owning those assets shall not receive credit towards equity in the system until those assets become part of the RWC as described in Section 5 of this Agreement.

4.4. Annual Audit

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An independent audit of RWC financial records will be conducted annually. The Board of Directors shall determine the scope of work of the independent annual financial audit.

5. RWC ASSETS

Each Member shall retain any and all right, title and interest in real estate, real property and fixtures thereto, including without limitation real estate, buildings, structures, towers, and generators that the Member owns, leases or licenses and that the Member authorizes or allows the Regional Wireless Cooperative to use as part of the Network.

Each Member is responsible for and shall bear the cost of maintaining its real estate and real property, including fixtures thereto, that are made part of the Network, to the extent necessary to maintain the operational integrity and capacity necessary to operate the Network. Each Member agrees that it will make all arrangements necessary to allow the Managing Members reasonable access to that Member's real estate, buildings, structures, towers and other facilities that are part of the Network for the purposes of inspecting, operating, and maintaining the Network. Prior to exercising the right of inspection provided by this paragraph, the Managing Member shall give the Member whose property is to be inspected reasonable notice under the circumstances then existing.

Any and all real estate and real property that is purchased by and on behalf of the Regional Wireless Cooperative shall be included in the Net Value of the RWC, with each Member's ownership interest in RWC real estate and real property expressed in their Member's Equity as defined in Section 1 of this agreement.

Any and all personal property, including frequencies, equipment, hardware and software, that is owned by a Member and brought into the Network, or that is purchased by and on behalf of the RWC, shall be held jointly and owned in common by the Members with each Member's ownership interest in the RWC personal property proportionate to the amount each Member invested in the property.

The Board of Directors shall approve the sale or disposal of any Network assets. In the event of a sale, the Members shall share in the proceeds, considerations or benefits from the sale in proportion to Members' Equity in place at the time of sale.

Each Member agrees that as part of its obligations and commitments in support of the Regional Wireless Cooperative, that it will not dispose of or remove from the Network, without the approval of the Board of Directors, its real estate or real property that it has initially allowed all Members to use.

The Members of the RWC agree that any real or personal property jointly purchased for the benefit of the RWC shall be titled and held in the name of the Administrative Managing Member, even though all financially contributing Members to the purchase shall actually own a percentage share in such real or personal property.

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Notwithstanding the foregoing, Members shall be permitted to maintain individual ownership over the personal property, including frequencies, equipment, hardware and software, where such individual ownership is desired. Individual personal property ownership is also permitted where personal property has been purchased by a Member for the sole and exclusive use of that Member. Should the RWC replace personal property that was solely owned by a Member, the replacement personal property shall be deemed jointly owned personal property of the RWC. The replaced piece of personal property may be retained or disposed of by the Member.

If any obligations of a Member issued to finance any real or personal property made a part of the Network are secured by any right, title, interest or lien in or upon such property (a "Finance Lien"), the rights of the RWC and the Members in and to such property, including the rights to use such property as part of the Network, shall at all times be subordinate and subject to such Finance Lien and the rights of the holder or holders of such Finance Lien. The terms of any such financing shall provide the RWC the right and reasonable opportunity to cure any default or non-appropriation with respect to such financing to allow the continued use of such property by the RWC and the Members as part of the Network.

Neither the RWC nor any Member will take or fail to take any action with respect to the use and operation of the Network, which action or failure to act would adversely affect the tax-exempt status of any obligations issued by any Member to finance any real or personal property made a part of the Network. Without limiting the foregoing, neither the RWC nor any Member will permit any private business use of the Network where such private business use would cause any Member's obligations to be treated as Private Activity Bonds under the Internal Revenue Code, as amended.

6. INSURANCE

6.1. Real Property

Each Member is responsible to insure real property, including fixtures thereto, titled in its own name.

Each Member who has leased real property, including fixtures thereto, to be used in the cooperative is responsible to insure that property according to the terms of the lease.

The Administrative Managing Member is responsible to insure real property cooperatively purchased or leased for the benefit of the RWC as directed by the Board of Directors.

6.2. Personal Property

The Administrative Managing Member is responsible for insuring, as directed by the Board of Directors, all personal property brought into the network as described in Section 5 of this document. Notwithstanding the foregoing, however, any and all personal property that is purchased or owned exclusively by a Member and brought into the Network by that Member shall be insured by such Member. Neither the Board of Directors nor the Administrative Managing member shall be responsible for a loss involving Member-owned property that

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became RWC jointly-owned property and was not timely reported in accordance with operating procedures that may be established by the Board of Directors.

6.3. Liability Insurance

Each Member is responsible to insure its liability assumed under the IGA Section 4.4.

The Board of Directors shall determine appropriate insurance coverage for the RWC's liability assumed under the IGA Section 4.4, in accordance with the IGA Section 4.8.

6.4. Insurance Programs

The RWC, Board of Directors, individual Members and Administrative Managing Member may use any combination of insurance, excess insurance or self-insurance to satisfy the terms of this Section 6.

7. SERVICES

The RWC will develop policies, procedures and guidelines that govern how Members, Associates, and Conditional and Interoperability Participants obtain services, whether routine or emergency, establish Talkgroups, set priorities, determine roaming/site access, use encryption, and operate on the Network. When using the Network each Member shall abide by all policies, procedures and guidelines established by the RWC and the terms and conditions of all applicable Agreements.

7.1. Programming and Reprogramming

The Network Managing Members, or a Board of Directors authorized provider, shall program or reprogram all Subscriber Units with a valid Network key. All Subscriber Units shall only be programmed or reprogrammed with valid programming templates that have been approved by the RWC. The cost of programming or re-programming Subscriber Units is the sole responsibility of each Member and is not included in the Annual Membership Fee.

7.2. Encryption

The Managing Members shall provide key management services including generation, distribution, storage, destruction and maintenance of key materials. Individual Members may be required to update key materials in Subscriber Units as directed by the RWC. The RWC may designate other agencies, such as Federal agencies, to provide key management services in special circumstances.

7.3. Network Management

The Network Managing Members shall program, maintain, and manage the Network databases in a manner that minimizes the degradation of operational performance and the loss or corruption

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of data. The Network Managing Members shall follow RWC established policies and procedures applicable to Network Management.

7.4. Interoperability

The RWC shall establish procedures and practices to support interoperability among all Members, Associates and Conditional and Interoperability Participants. The RWC shall follow the National Incident Management System (NIMS) protocols for interoperable communications.

7.5. Training

Each Member shall ensure that its users are properly trained prior to any use of the Network.

8. PERFORMANCE AND OPERATION

The Network is designed and implemented in accordance with design and evaluation standards for public safety systems. During the technical analysis phase for adding new Members to the Network, the RWC shall follow the RWC design criteria and evaluation standards to protect both current and future Members. The RWC shall be responsible to maintain coverage, capacity and performance in accordance with public safety needs, requirements and standards. The RWC intends to maintain the existing Network coverage and capacity requirements; however, there are no guarantees of Network reliability and availability for new Members when operating within the existing service territory. The RWC anticipates in certain situations restrictions may have to be employed to assist with capacity control during the new Member evaluation process. The nature of the restrictions will be explored and discussed with each applicant on a case-by-case basis.

9. MAINTENANCE

9.1. Maintenance Plans Intra/Inter Agency

The Maintenance Managers and Network Managing Members shall provide Network maintenance in accordance with the policies, procedures, standards and responsibilities established by the RWC. The Maintenance Managers and Network Managing Members shall provide reasonable notice to Members of any scheduled or unscheduled service affecting a Member's use of the Network.

9.2. Responsibility for Repair of Subscriber Units

Each Network user is solely responsible for the maintenance and repair of its Subscriber Units. Only Members and vendors, certified by the RWC shall be used for the maintenance and repair of Subscriber Units. When maintaining and repairing Subscriber Units, authorized Members and vendors shall adhere to RWC policies and procedures including handling of Network keys, encryption keys, and configuration programming.

EXHIBIT B

RWC ORGANIZATION STRUCTURE

