

**AGREEMENT TO
PROVIDE FOR INTEROPERABILITY BETWEEN THE TOPAZ REGIONAL
WIRELESS COOPERATIVE NETWORK AND Arizona Department of Health Services**

The Parties to this agreement ("Agreement") are the City of Mesa, a municipal corporation duly organized and existing under the laws of the State of Arizona ("Mesa") and the AZDHS, an Public Service corporation duly organized and existing under the laws of the State of Arizona (" AZ "). Mesa and AZDHS shall be referred to individually as a "Party" and collectively as "Parties".

RECITALS.

WHEREAS, Mesa is the Administrative Manager of the Topaz Regional Wireless Cooperative Network ("TRWC") and is entering into this Agreement in its capacity as Administrative Manger of the TRWC and with the authorization of the TRWC Board of Directors.

WHEREAS, AZDHS is an Public Service corporation that provides emergency and non-emergency medical transportation services, fire protection and other safety-related services.

WHEREAS, when used in this Agreement, the "TRWC Network" shall mean the public safety/municipal communications system that includes, but is not limited to, the 700/800 MHz system originally procured and built by the City of Mesa and commonly referred to as "TOPAZ" or the Trunked Open Arizona Network.

WHEREAS, when used in this Agreement, "TRWC Member" shall include the City of Apache Junction, the Apache Junction Fire District, the City of Mesa, the Town of Gilbert, the Town of Queen Creek and any other entity that subsequently becomes a Member of the TRWC.

WHEREAS, Subject to the terms and conditions of this Agreement, the Parties desire to enter into this Agreement to allow AZDHS to use the TRWC Network for intermittent interoperable situations or circumstances.

WHEREAS, this Agreement is entered into under the authority and pursuant to Section 4.1.5 of the TRWC Governance Agreement. This Agreement is subject to the terms and conditions of Section 4.1.5 of the TRWC Governance Agreement.

AGREEMENT.

NOW, THEREFORE, in consideration of the foregoing Recitals, the mutual covenants herein contained, and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows

1. Term and Duration of Agreement; Termination

1.1. The initial term of this Agreement is one (1) year, commencing when the Agreement has been executed by all Parties (the "Effective Date") unless otherwise terminated in accordance with this Agreement; thereafter, this Agreement will automatically renew for terms of one (1) year unless otherwise terminated in accordance with this Agreement.

1.2. The Parties shall have the right to terminate this Agreement at anytime, with or without cause, during the term of this Agreement or any extended term by first providing not less than sixty (60) days prior written notice to the other Party.

2. Interoperability.

2.1. AZDHS Use of TRWC Network. Subject to reasonable conditions imposed by the TRWC Board of Directors, AZDHS employees or contractors that will be using the TRWC Network (“AZDHS Interoperability Participants”) may use the TRWC Network to support TRWC Members and AZDHS with intermittent interoperable situations. The TRWC will develop policies, procedures and guidelines that govern how AZDHS Interoperability Participants obtain services, whether routine or emergency, establish Talkgroups, set priorities, determine roaming/site access, and operate on the TRWC Network. When using the TRWC, the AZDHS Interoperability Participants shall abide by all policies, procedures and guidelines established by the TRWC as a condition for using the TRWC Network.

2.2. No AZDHS Interoperability Participant Voting Rights. AZDHS Interoperability Participants shall have no TRWC voting rights or representation on the TRWC Board of Directors or any TRWC committees.

2.3. No AZDHS Interoperability Participant Fees and Costs. No fees and costs will be assessed to AZDHS Interoperability Participants for using the TRWC Network.

2.4. Restrictions on Interoperability Participant Use of Networks. Notwithstanding anything to the contrary in this Section 4, Mesa may restrict AZDHS Interoperability Participants from using the TRWC Network if the use by the AZDHS Interoperability Participants is adversely affecting the TRWC Network. In addition, notwithstanding anything to the contrary herein, AZDHS Interoperability Participants use of the TRWC Network is conditioned upon the TRWC Network at all times having sufficient capacity to serve TRWC Members.

2.5. Interoperability Defined. As used in this Agreement the word “Interoperability” shall mean: “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.”

3. Records; Confidentiality. AZDHS shall treat any information about the TRWC’s Network (“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. If AZDHS receives a request for information concerning the TRWC’s Network, AZDHS shall promptly forward the request to Mesa for consideration and response.

4. 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.

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

6. **Cooperation.** 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.

7. **MESA AND TRWC DISCLAIMER OF WARRANTIES.** AZDHS ACKNOWLEDGES AND AGREES THAT NEITHER MESA NOR ANY OTHER TRWC MEMBER WARRANT THE RELIABILITY OR PERFORMANCE OF THE TRWC NETWORK. MESA DISCLAIMS ALL WARRANTIES WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY, APPLICABLE OR RELATING TO THE EQUIPMENT, SUPPLIES, MAINTENANCE OF THE EQUIPMENT, OR OTHER ITEMS PROVIDED UNDER THE AGREEMENT BY MESA OR ANY OTHER TRWC MEMBERS, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND AZDHS ACKNOWLEDGES THAT NO SUCH WARRANTIES HAVE BEEN MADE BY MESA OR ANY OTHER TRWC MEMBER. AZDHS ALSO HEREBY WAIVES ANY RIGHTS AND REMEDIES TO MAKE A CLAIM AGAINST MESA, THE TRWC OR ANY TRWC MEMBER INCLUDING, WITHOUT LIMITATION, ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, FOR ANY REASON WHATSOEVER, BASED ON (1) AZDHS'S USE OF THE TRWC NETWORK, OR (2) MESA'S OR ANY OTHER TRWC'S MEMBER'S OPERATION AND MAINTENANCE OF THE TRWC NETWORK. AZDHS AGREES THAT THE TRWC NETWORK AND AZDHS'S USE OF THE NETWORK IS PROVIDED ON AN "AS-IS" "WHERE IS" BASIS WITH ALL FAULTS.

8. **Indemnification.** AZDHS agrees to defend (with counsel reasonably acceptable to Mesa), indemnify and hold harmless Mesa and any other TRWC Member from all suits, legal or administrative proceeding liability, costs, attorney's fees, damages and penalties which may be incurred by or asserted against Mesa or any other TRWC Member arising from any accident, injury or damage resulting from AZDHS's use of the TRWC Network. AZDHS shall advance and pay all expenses, including actual attorney's fees, incurred by Mesa or any other TRWC Member in defending against any such claims, demands, liabilities and causes of action. AZDHS agrees to notify Mesa promptly upon receiving any notice of any such asserted claim, liability, demand or cause of action.

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

10. **Third Parties.** All TRWC Members are intended third party beneficiaries of this Agreement. Exceed as otherwise provided by the first sentence of this Section 10. 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 Agreement or of any duty, obligation, or undertaking established under this Agreement.

11. Notice. Any notice, consent or other communication (“Notice”) required or permitted under this Agreement shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, return receipt requested, or deposited with any commercial air courier or express service addressed as follows:

If intended for Mesa:

TRWC Executive Director
City of Mesa
P.O. Box 968
Mesa, AZ 85211

If intended for AZDHS :

150 N. 18th Ave, Suite 150

Phoenix, AZ 85007

Attention: Paul Barbeau

Notice shall be deemed received at the time it is personally served, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, five (5) days after the notice is deposited in the United States mail as above provided. Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address, telephone or FAX number, or the person to receive the notice, by notifying the other party as provided in this Section.

Notices sent by facsimile transmission shall also be deposited in the United States mail to the recipient at the above address on the same day the facsimile transmission is sent. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

12. Dispute Resolution. If a complaint, dispute or controversy arises under this Agreement, the Parties agree to negotiate, in good faith, a mutually agreeable solution. In the event the Parties cannot agree on a solution, the Parties agree to use arbitration as provided in A.R.S. § 12-1518. Nothing in this Agreement will prohibit a Party from seeking injunctive relief after first pursuing arbitration under this Paragraph.

13. 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.

14. Uncontrollable Events. 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 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, and action or non-action by or failure to obtain the necessary authorizations or approvals

from any governmental agency or authority or the electorate, 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.

15. **Assignment and Binding Effect.** AZDHS may not assign its rights or obligations under this Agreement without the prior written consent of Mesa which consent may be granted or denied at Mesa's sole and absolute discretion. Except as otherwise provided in the first sentence of this Section 14, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

16. **Entire Agreement.** This Agreement contains the entire agreement and understanding among the Parties regarding the subject matter herein and supersedes and replaces all related prior negotiations, agreements and proposed agreements, written or oral. 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.

17. **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.

18. **Severability.** Except for each Party's right to terminate this Agreement pursuant to Section 1.2, 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 this Agreement. 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.

19. **Attorneys Fees.** The prevailing party in any litigation or arbitration arising out of this Agreement shall be entitled to the recovery of its reasonable attorneys' fees, court costs and other litigation related costs and fees from the other party.

20. **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.

21. **Counterparts.** This Agreement 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.

22. **Recitals Incorporated.** The Parties acknowledge that the Recitals to this Agreement are true, accurate and correct, and are hereby incorporated into and made a part of the operative provisions of this Agreement as if fully set forth therein without difference or distinction.

23. **Personnel.** This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership or formal business association or organization of any kind between the parties. No employee, agent, or servant of a Party shall be deemed to be an employee, agent or servant of the other Party. Except as otherwise provided by Sections 7 and 8 of this Agreement, each Party will be solely and entirely responsible for its acts and the acts of its employees, agents, servants, subcontractors, and volunteers during the performance of this Agreement. Each Party will have total responsibility for all salaries, wages, bonuses, retirement withholdings, worker's compensation, occupational disease compensation, unemployment compensation, other employment compensation, other employee benefits, and all employer's taxes and premiums concerning the persons who are supplied by that Party in the performance of this Agreement, and each Party agrees to hold the other Party harmless from any liability thereof.

24. **E-Verify Laws.** To the extent applicable under A.R.S. § 41-4401 and 23-214, AZDHS represents and warrants compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements of A.R.S. 23-214(A). Breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by Mesa. Mesa retains the legal right to randomly inspect the papers and records of any employee who works under this Agreement to ensure compliance with the above-mentioned laws.

25. **Scrutinized Business Operations.** AZDHS acknowledges and agrees that it is in compliance with ARS 35-391 and ARS 35-391 as it applies to doing business with or having a material interest in a company that does business with Sudan and Iran, respectively. If Mesa determines that AZDHS has submitted a false certification or representation, Mesa reserves the right to impose any and all remedies provided by law, in its sole discretion, including immediate termination of this Agreement.

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

CITY OF MESA


By: _____

Date: _____

Title: _____

AZDHS

an Arizona corporation

By: 

Date: 6/17/14

Title: **Logistics Section Chief**

PAUL BARBEAU

Date: October 20, 2011

To: TOPAZ Regional Wireless Cooperative (TRWC) Board of Directors
Dale Shaw, TRWC Executive Director

From: Randy Thompson

Subject: Administrator Update

Capital Projects

DC Power Plant Equipment – this equipment provides power to the radio and microwave equipment at the TRWC radio sites. The previous equipment was more than ten years old and was failing at an increasing rate. The new equipment will improve the reliability of the TRWC radio site equipment and the TRWC 800 MHz radio system. The new equipment has been installed, tested, accepted, and the project is complete.

Spread Spectrum Microwave Radios – this project will replace the microwave radios currently in use between the Twin Knolls site and Apache Junction Fire Station 264, and the TRW site and Apache Junction Fire Station 262. The existing microwave radios operate in unlicensed radio spectrum, which is susceptible interference, and causes reduced reliability of the radio network connectivity to the TRWC sites at Apache Junction Fire Station 264, Apache Junction Fire Station 262, and Apache Junction Police Dispatch. New microwave radios will be installed utilizing licensed microwave frequencies which are far less susceptible to interference. This project is expected to start early in calendar year 2012.

Thompson Peak Communications Facility Improvements – this joint project with the Arizona Department of Public Safety (DPS) will construct a new 180-foot radio tower, equipment building, and emergency generator on Thompson Peak, which the TRWC’s primary backup and wide-area coverage site. An Intergovernmental Agreement (IGA) has been executed between the City of Mesa (as Administrative Manager for the TRWC) and Maricopa County, and a three-way site supplemental agreement to the IGA between Mesa, Maricopa County, and DPS has been executed. The current forecast for the start of construction is November, 2011, with a duration of approximately 4 months.

Inter Sub Site Interface (ISSI) – this project would implement “system of systems” networking to provide interoperability with other regional communications systems, such as the Yuma Regional Communications System (YRCS), which hosts the Arizona Department of Public Safety (DPS) and Arizona Department of Transportation, the Phoenix Regional Wireless Cooperative (RWC), and future systems, such as Maricopa County. A simplified project utilizing talkgroups patched through an audio bridge hosted by DPS is under development, and is awaiting the completion of a governance agreement by the Arizona Department of Administration’s Public