

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITIES OF PHOENIX AND MESA ON BEHALF OF
THE REGIONAL WIRELESS COOPERATIVE AND
THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORKS**

No.

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into by and between the City of Phoenix (“Phoenix”) in its capacity as the Administrative Managing Member of the Regional Wireless Cooperative (“RWC”) Network and the City of Mesa (“Mesa”) in its capacity as the Administrative Manager of the Topaz Regional Wireless Cooperative (“TRWC”) Network (hereinafter the RWC and the TRWC as represented by Phoenix and Mesa respectively shall be referred to as the “Parties”).

WHEREAS, Mesa is the Administrative Manager of the TRWC and is entering into this Agreement with the approval and authorization of the TRWC Board of Directors; and

WHEREAS, Phoenix is the Network Managing Member and Administrative Managing Member of the RWC and is entering into this Agreement with the approval and authorization of the RWC Board of Directors; and

WHEREAS, subject to the terms and conditions of this Agreement, the Parties desire to enter into this Agreement to allow TRWC Members to use the RWC for intermittent interoperable situations or circumstances and for the RWC Members to use the TRWC for intermittent interoperable situations or circumstances; and

WHEREAS, the Parties are authorized to enter into this Agreement by the joint exercise of powers and 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; and

WHEREAS, the Parties are entering into this Agreement for joint and cooperative action and communication between themselves to achieve the purposes specified in paragraphs above; and

NOW THEREFORE, the Parties, in consideration of the foregoing and the mutual promises contained herein, hereby agree as follows:

1. **Term and Duration of Agreement; Termination.**

- 1.1. This Agreement shall be binding upon each signing Party 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. In order for this Agreement to have legal effect, both Parties must have signed it. The Effective Date of this Agreement will be the date when the last Party has executed the Agreement. The initial term of this Agreement is ten (10) years, commencing from the Effective Date, unless otherwise terminated in accordance with this Agreement. Thereafter, this Agreement will automatically renew for terms of ten (10) years, 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 six (6) months prior written notice to the other Party.

2. **Interoperability.**

2.1. **Use of Networks.**

- 2.1.1. *RWC Interoperability Participant Use of the TRWC.* Subject to reasonable conditions imposed by the TRWC Board of Directors and the provisions of the Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the Topaz Regional Wireless Cooperative Network, Members of the RWC (“RWC Interoperability Participants”) may use the TRWC Network to support existing TRWC and RWC Members with intermittent interoperable situations. The TRWC will develop policies, procedures and guidelines that govern how RWC Interoperability Participants obtain services, whether routine or emergency, establish Talkgroups, set priorities, determine roaming/site access, use encryption, and operate on the TRWC Network. When using the TRWC Network, the RWC

Interoperability Participants shall abide by all policies, procedures and guidelines established by the TRWC as a condition for using the TRWC Network. Notwithstanding anything to the contrary herein, RWC Interoperability Participants may only use the TRWC Network if TRWC Interoperability Participants are allowed to use the RWC Network. The Parties recognize that such use of each other's networks need not be concurrent or simultaneous.

2.1.2. **TRWC Interoperability Participant Use of the RWC.** Subject to reasonable conditions imposed by the RWC Board of Directors and the provisions of the RWC Amended and Restated Intergovernmental Agreement, Members of the TRWC ("TRWC Interoperability Participants") may use the RWC Network to support existing RWC and TRWC Members with intermittent interoperable situations. The RWC will develop policies, procedures and guidelines that govern how TRWC Interoperability Participants obtain services, whether routine or emergency, establish Talkgroups, set priorities, determine roaming/site access, use encryption, and operate on the RWC Network. When using the RWC Network, the TRWC Interoperability Participants shall abide by all policies, procedures and guidelines established by the RWC as a condition for using the TRWC Network. Notwithstanding anything to the contrary herein, TRWC Interoperability Participants may only use the RWC Network if RWC Interoperability Participants are allowed to use the TRWC Network. The Parties recognize that such use of each other's networks need not be concurrent or simultaneous.

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

2.3. **No Interoperability Participant Fees and Costs.** No membership fees and costs will be assessed to RWC Interoperability Participants for using the TRWC Network and no membership fees and costs will be assessed to TRWC Interoperability Participants for using the RWC Network. The RWC and TRWC Networks each have their own budgets and manner of financing. The Parties mutually agree that no additional payments will be made to each other to accomplish the goals of this Agreement, and that the RWC and TRWC will each bear their own costs for the mutual use of each other's Network.

2.4. **Restrictions on Interoperability Participant Use of Networks.** Notwithstanding anything to the contrary in this Section 4, Mesa may restrict RWC Interoperability Participants from using the TRWC Network if the use by the RWC Interoperability Participants is adversely affecting the TRWC Network. Notwithstanding anything to the contrary in this Section 4, Phoenix may restrict TRWC Interoperability Participants from using the RWC Network if the use by the TRWC Interoperability Participants is adversely affecting the RWC Network.

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.** To the extent permitted by law, the Parties shall treat any information about the other Party's Network (either TRWC or RWC) ("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 other Party's Network, shall promptly forward the request to the other Party 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.**

6.1. 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 the performance of this Agreement.

- 6.2. 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 jointly and cooperatively defend the validity of this Agreement.
- 6.3. The Parties may elect and shall have the right to seek specific performance by any Party of any or all of the obligations set forth in this Agreement. The Parties agree that 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.
- 6.4. The Parties agree to meet regularly, with respective TRWC and RWC Board of Directors, Executive Director, and other appropriate representation, to discuss operational items and interoperability needs. The number of Board of Directors members from the TRWC and RWC that will be allowed to participate will be limited so that the quorum requirements of each Board will not be met. The Parties also agree to participate together at the working level including operational and technical working groups.

7. Security.

- 7.1. In order to accommodate each other's programming needs, the Parties agree to share access to each other's system credentials in accordance with the policies and procedures for the TRWC and RWC.
- 7.2. Should radios be lost, stolen, misplaced, changed, or added, the Parties agree to report all such losses, including losses by their respective Interoperability Participants, in a timely manner in accordance with each other's policies and procedures.

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

9. Third Parties. 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.

10. 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 to the TRWC:	TOPAZ Regional Wireless Cooperative Executive Director Mesa Information Technology Department Stop Box 968. Mesa, AZ 85211-968 Telephone: (480) 644-5377 Fax: (480) 644-2175
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If to the RWC :	Regional Wireless Cooperative Executive Director Phoenix Intergovernmental Relations 200 West Washington Street Phoenix, AZ 85003-2295 Telephone: (602) TBD FAX: (602) TBD
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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 sent by regular mail to the recipient at the above address. This requirement for duplicate notice is not intended to change the effective date of the notice sent by facsimile transmission.

10. **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 at anytime as provided by Paragraph 6.3 and without first pursuing arbitration under this Paragraph.
11. **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.
12. **Uncontrollable Events.**
 - 12.1. 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.
 - 12.2. 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.
13. **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; provided, however, that nothing shall relieve any Party of any obligation under this Agreement, except upon the express written consent of the other Party.
14. **Entire Agreement.** This Agreement contains the entire agreement and understanding among the Parties regarding the subject matter herein and supersedes and replaces Intergovernmental Agreement #107120. 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.
15. **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.
16. **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 TRWC and RWC Networks. 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.
17. **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.
18. **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.
19. **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. 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.

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

CITY OF MESA, a municipal corporation
Chris Brady, City Manager

CITY OF PHOENIX, a municipal corporation
DAVID CAVAZOS, City Manager

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Charles T. Thompson
Chief Information Officer
Date: _____

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

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

City Attorney

City Attorney

ATTEST:

ATTEST:

City Clerk

City Clerk