



**To:** Dale Shaw – Chief Technology Officer  
Dennis Fulton – Senior Accountant

**Through:** Donna Bronski – Deputy City Attorney

**From:** Barry Hegrenes – Risk Management

**Date:** 03-15-2011

**Subject:** TRWC Agreement- Risk Management Assessment

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### **BACKGROUND**

The City of Mesa (COM) is engaged in various Inter-governmental agreements (IGA's). The TRWC Agreement is a communications network sharing agreement amongst various agencies, of which the COM is one. The most recent addition to the IGA (proposed) is the Rio Verde Fire Department.

The purpose of my involvement in reviewing the TRWC agreement(s) is to assure the framework for procurement of insurance is feasible and to assure there is equitable "cost recovery" for insurance procurement from the IGA members.

It is important to note there are two (2) working documents – the GOVERNANCE AGREEMENT (GA) and the INTER-GOVERNMENTAL AGREEMENT (IGA) Provisions. Many terms within these agreements are similar and/or duplicative.

### **GENERAL OVERVIEW OF THE "GA" AND THE "IGA"**

As for the funding/financing mechanisms for "insurance-related" losses and contingencies, the language in the GA and IGA is broad, giving the decision powers (for financing and/or payouts) to the Executive Director and/or the Board. This is acceptable and preferred. One could draft an extensive schedule of pro-rated percentages on how to contribute to a Risk Management Contingency Fund. However, the GA and IGA, again, currently delegate the authority to the Director and/or Board to determine if "equal or unequal" contributions are required – and the amounts of those contributions. Insofar as there will probably be a fair amount of membership addition and subtraction over the years (Rio Verde being the newest member coming on board soon), the proposed model is probably best. Otherwise, you would find yourself "amending" various financing schedules with changing membership as opposed to making it a policy/procedural issue (as it is now).

## REVIEW OF RISK MANAGEMENT PROVISIONS IN THE “GA”

In the **GA**, I focused on Section 5.6 (Special Assessments). This is a good location to address the issue of “casualty loss contingency financing.” I would recommend the added language (in **UNDERLINED BOLD CAPS**):

*5.6. Special Assessments (including Disaster Recovery, **UNINSURED CASUALTY LOSSES, Additional Subscriber Units and Talk Groups, Roaming and Other Special Assessments**)*

*5.6.1. The Board of Directors may assess other fees on an as-needed basis to pay the costs of disaster recovery, **PAYMENT FOR UNINSURED CASUALTY LOSSES, REGULATORY FINES OR INSURANCE DEDUCTIBLES**, the use of the Network by an Interoperability Participant, Conditional Participant, or Associate or to pay the costs of special projects that do not benefit all Members in a reasonably proportionate manner. Such fees may be assessed in any manner as approved by the Board of Directors and need not be equal among Members.*

Additionally, there could be a small addition to the very limited language speaking directly to INSURANCE in Section 10.4 as follows:

### **10.4. Insurance**

*The Area Managers, subject to the Board of Director’s approval, shall determine the appropriate insurance coverage for **TRWC’s INSURABLE ASSETS AND LIABILITY EXPOSURES**.*

## REVIEW OF RISK MANAGEMENT PROVISIONS IN THE “IGA”

In the **IGA**, I focused on Section 4.8 (MANNER OF FINANCING). I believe this section is fine – again – sticking with the “broad powers” approach with the Director and/or Board.

*4.8. The TRWC’s Board of Directors shall determine what insurance coverage is appropriate to protect the Parties from risks concerning the TRWC and the Network. The Board of Directors shall obtain such insurance on behalf of the TRWC. 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. **(NO CHANGES)***

## EXISTING INSURANCE COVERAGE AND CLAIM /LOSS / EXPOSURE SCENARIOS

It is important to note (currently) if there is any “hardware” (transmitting stations etc) which are NOT listed on the City of Mesa’s property insurance schedule (and I am not aware of any that are listed), we would be limited in coverage to \$1MIL (with a \$50K deductible) and I have not read the policy in detail to determine if there may be a sub-limit on “communication equipment” which could possibly lessen the coverage limit to below \$1MIL. The \$1MIL coverage applies to “miscellaneous unnamed locations.”

If/when the TRWC wishes to formalize the insurance terms for the members, then COM (as the managing agent) can receive the direction of the Board and act accordingly. Until that time, property and liability insurance is in force (\$50K deductible for property – as noted) and \$3MIL self insured retention (SIR) – which is pretty much the same as a deductible – for liability claims (e.g. an adventurous citizen dies while climbing a communication tower). Any such claim (if there is TRWC negligence and the claim is

compensable) would indeed be a financial burden to all the members. Hence, practical implementation of GA Section 5.6 and IGA Section 4.8 are critical. In other words, the “broader powers” of the Board and/or the Executive Director to spread insurance costs as defined in 5.6 and 4.8 are necessary to allow quick and efficient recovery of insurance costs from the IGA members.

#### **SUMMARY OF RISK MANAGEMENT OVERVIEW OF THE “GA AND THE “IGA”**

With this format, similar to what is being implemented with the Greenfield Plant (or “GWRP” – an IGA with Gilbert and Queen Creek), Mesa’s Finance Division could come to Risk Management and get a “rate” carve-out from COM’s liability and/or property insurance policy premiums (annually) – then provide those numbers to the Board so cost allocation can go forward. In other words, the TWRC’s COM’s annual premiums for liability and property exposures are wrapped into COM’s insurance program. COM does have a way to “un-bundle” those costs so COM’s Finance Division can charge back the TRWC insurance costs to the IGA members.

If the Board sought input from Risk Management (myself and/or other Risk Managers from the participant agencies), we could surely present something for the Board to review, including “stand alone” insurance options if that would be the pleasure of the Board.

Given the size of the operation (small/medium), my suspicion is Risk Management’s involvement would be more in reporting premium numbers for members (through the Finance Division) to contribute toward payment and/or to provide guidance on what a good number might be to “stockpile” in a contingency fund for uninsured losses/regulatory fines etc.

Hopefully this review has been beneficial for you. If you seek any additional feedback or have additional documentation for me to review, please feel free to contact me.