

**AGREEMENT TO
PROVIDE FOR USE OF THE TOPAZ REGIONAL WIRELESS COOPERATIVE
NETWORK BY SW GENERAL, INC., DBA SOUTHWEST AMBULANCE, AN
ARIZONA CORPORATION**

This Agreement (“Agreement”) is made and entered into this ____ day of _____, 2010 (“Effective Date”) by and between the City of Mesa, a municipal corporation duly organized and existing under the laws of the State of Arizona (“Mesa”) and SW General, Inc., dba Southwest Ambulance, an Arizona Corporation duly organized and existing under the laws of the State of Arizona (“SWA”). Mesa and SWA 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, SWA is an Arizona corporation that provides emergency and non-emergency medical transportation services, 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 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, 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 SWA to use the TRWC Network to support contracted for services with Members of the TRWC.

WHEREAS, the Parties intend for this Agreement to supercede and replace any existing agreements between the Parties relating to TRWC Network and the maintenance of SWA’s Subscriber Units (as defined in Paragraph 2.3 of this Agreement).

WHEREAS, this Agreement is entered into under the authority and pursuant to Section 4.1.5 of the TRWC Governance Agreement (the “governance Agreement”) and is subject to the terms thereof.

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 on 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. SWA shall be responsible for all fees and costs assessed pursuant to this Agreement through and including the termination date of this Agreement.

2. SWA Use of TRWC Network.

2.1. SWA Use of TRWC Network Conditioned upon Contract with TRWC Members. 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, SWA employees or contractors that will be using the TRWC Network (“SWA Associate Participants”) may use the TRWC Network solely to accomplish the purposes of any contracted services between SWA and any TRWC Members and for no other purposes. The TRWC will develop policies, procedures and guidelines that govern how SWA Associate 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 Network, the SWA Associate Participants shall at all times abide by all policies, procedures and guidelines established by the TRWC as a condition for using the TRWC Network. SWA shall ensure that all SWA Associate Participants are properly trained prior to any use of the TRWC Network.

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

2.3. SWA Associate Participant Fees and Costs. SWA shall pay its share consisting solely of Operation and Maintenance fees and costs for using the TRWC Network under the same conditions and in the same manner as is assessed Members of the TRWC. SWA shall be assessed Operations and Maintenance fees and costs for its use of the TRWC Network on a per Subscriber Unit basis and proportionate to the total number of paying Subscriber Units using the TRWC Network or as otherwise assessed by the TRWC Board of Directors. All fees and charges assessed to SWA for its use of the TRWC Network is subject to review by the TRWC Board of Directors. As used in this Agreement, the term “Subscriber Unit” shall mean a voice and/or data unit (operating portable, mobile, and control station).

2.4. Restrictions on SWA Associate Participant Use of TWRC Network. Notwithstanding anything to the contrary in this Section 2.4, Mesa may restrict SWA Associate Participants from using the TRWC Network if the use by the SWA Associate Participants is adversely affecting the TRWC Network. In addition, notwithstanding anything to the contrary

herein, SWA Associate Participants use of the TRWC Network is conditioned upon the TRWC Network at all times having sufficient capacity to serve TRWC Members. SWA's use of the TRWC Network is contingent upon SWA operating under a contract with a TRWC Member.

2.5. Mesa is SWA's Point of Contact. SWA's point of contact regarding its use of the TRWC Network must be Mesa even if it is operating under a contract with another Member of the TRWC. Any issues that refer or relate to SWA's use of the TRWC Network or this Agreement must be addressed with Mesa and no other entity. No other entity other than Mesa has the ability to bind the TRWC regarding any issues relating to this Agreement or SWA's use of the TRWC Network.

3. **Records; Confidentiality.** SWA 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 SWA receives a request for information concerning the TRWC's Network, SWA 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.**

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.

6.2 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.

7. **MESA AND TRWC DISCLAIMER OF WARRANTIES.** SWA 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 SWA ACKNOWLEDGES THAT NO SUCH WARRANTIES HAVE BEEN MADE BY MESA OR ANY OTHER TRWC MEMBER. SWA 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) SWA'S USE OF THE TRWC NETWORK, OR (2) MESA'S OR ANY OTHER TRWC'S MEMBER'S OPERATION AND MAINTENANCE OF THE TRWC NETWORK. SWA AGREES THAT THE TRWC NETWORK AND SWA'S USE OF THE TRWC NETWORK IS PROVIDED ON AN "AS-IS" "WHERE IS" BASIS WITH ALL FAULTS.

8. Indemnification. SWA 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 SWA's use of the TRWC Network. SWA 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. SWA agrees to notify Mesa promptly upon receiving any notice of any such asserted claim, liability, demand or cause of action.

9. Responsibility for Repair of Subscriber Units. In conjunction with this Agreement, SWA is entering into a new Two-Way Radio Equipment Maintenance Agreement ("New Radio Equipment Agreement") with same Effective Date as this Agreement. Pursuant to THE New Radio Equipment Agreement, Mesa shall maintain and repair the SWA Associate Participants Subscriber Units and related equipment for as long as the New Radio Maintenance Agreement remains in full force and effect. If the New Radio Equipment Agreement is either terminated or of no force and effect, then SWA shall be solely responsible for the maintenance and repair of SWA Associate Participants' Subscriber Units and related equipment and shall comply with all TRWC policies, procedures and guidelines relating to the maintenance and repair of the Subscriber Units and related equipment. The TRWC policies and procedures for Network keys, encryption keys, and configuration programming shall apply when maintaining and repairing subscriber equipment. All TRWC Network programming shall be done by entities authorized by the TRWC. The cost of any such programming specifically relating to SWA's use of the TRWC Network and any other related costs shall be paid by SWA. Any general TRWC Network programming cost shall be paid by the TRWC and billed to TRWC Members and TRWC Associates (as defined in the Governance Agreement), including, without limitation, SWA on an allocation method as approved by the TRWC Board of Directors.

10. Existing Two-Way Radio Communications Agreement and Two-Way Radio Equipment Agreement of No Force and Effect. The Parties hereby agree that this Agreement and the New Radio Equipment Agreement supercedes and replaces the 800 MHz Two-Way Radio Communications Agreement between Mesa and SWA dated November 7, 2005 and the Two-Way Radio Equipment Maintenance Agreement between Mesa and SWA executed by Mesa on May 31, 2005 and by SWA on April 6, 2005 (collectively the "2005 Agreements") and as those agreements may have been modified and agree that the 2005 Agreements are hereby terminated and of no force and effect effective as of the Effective Date of this Agreement.

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

12. Third Parties. All TRWC Members are intended third party beneficiaries of this Agreement. Except as otherwise provided by the first sentence of this Section 12, 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.

13. 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 SWA:

9221 E VIA DE VENTURA
SCOTTSDALE, AZ 85258
Attention: _____

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.

14. 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 6.2 and without first pursuing arbitration under this Paragraph.

15. **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.

16. **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.

17. **Assignment and Binding Effect.** SWA 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 17, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

18. **Entire Agreement.** This Agreement and the New Radio Equipment Agreement contains the entire agreement and understanding among the Parties regarding the subject matter herein and supercedes 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.

19. **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.

20. **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.

21. **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.

22. **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.

23. **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.

24. **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.

25. **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.

26. **E-Verify Laws.** To the extent applicable under A.R.S. § 41-4401 and 23-214, SWA 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.

27. **Scrutinized Business Operations.** SWA 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 SWA 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: _____

SWA GENERAL, INC.,
dba SOUTHWEST AMBULANCE,
an Arizona corporation

By: _____

Date: _____

Title: _____