

INTERGOVERNMENTAL AGREEMENT

FOR

COMMUNICATIONS SYSTEMS STRATEGIC ALLIANCE

THIS INTERGOVERNMENTAL AGREEMENT FOR COMMUNICATIONS SYSTEMS STRATEGIC ALLIANCE (the “Master IGA”) is entered into by and between the attached signatories, (individually a “Party” and collectively the “Parties”).

RECITALS:

WHEREAS, public safety grade radio and data communications networks are critical resources for public safety first responders making timely and effective response to calls for preserving life, property and the general public safety and welfare; and

WHEREAS, public safety first responders must provide service in situations requiring cross-jurisdictional use of neighboring or overlapping radio or data communications networks; and

WHEREAS, public safety communications networks are expensive to build, expand and maintain; and

WHEREAS, coordinated communications systems strategies are in the public’s best interest; and

WHEREAS, the Parties each administer a public safety communications system (individually a “System” and collectively “Systems”) consisting, in part, of a collection of devices, software, hardware, technologies, facilities, towers or other devices or structures that provide voice and data communications capability and carry out their oversight responsibilities within the Parties’ respective Systems; and

WHEREAS, the Parties wish to collaborate concerning the delivery of communications services to their respective users when such collaboration benefits at least one of the Parties participating in a particular cooperative effort; and

WHEREAS, the Parties are authorized to enter into this Master IGA by explicit authority granted by their respective Systems’ governing documents or appropriate governing body action, and act on behalf of their respective System; and

WHEREAS, the Parties are authorized to enter into intergovernmental agreements for services or for the exercise of joint or common powers, pursuant to Arizona Revised Statutes § 9-240, § 11-951, et seq., § 15-342(13) and §15-1444(B)(4);

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

AGREEMENT:

Section 1. Coordinating Council and Committees

1.1 Coordinating Council. All initiatives and actions contemplated to be taken pursuant to this Master IGA will be evaluated by a committee consisting of representative(s) or alternate representative(s) from each of the Systems (“Coordinating Council”). The Coordinating Council will forward recommendations on any initiatives and actions within the scope of this Master IGA to each respective System’s governing body for consideration and possible action. The Parties must use diligent efforts to involve the Coordinating Council on Collaborative Efforts (defined in Section 3.1 below) between the Parties, but the Parties may take action independent of or not recommended by the Coordinating Council.

1.1.1 Coordinating Council Representatives. The Coordinating Council will be composed of representatives (“Coordinating Council Representatives”) who will be appointed as follows. Each Party will establish, through their respective System’s governing body, a primary representative from its governing System body to participate on the Coordinating Council. Each Party’s System’s governing body is entitled to have a maximum of two Coordinating Council Representatives. One representative must be an executive level member (“Coordinating Council Executive Representative”) who has direct involvement in the governance decision-making process for their respective System. In addition to the Coordinating Council Executive Representative, each Party may identify one Coordinating Council Representative that is an actual user of that Party’s System who possesses an understanding of routine operational system use (“Coordinating Council User Representative”). A Party’s System’s governing body may only have one Coordinating Council Executive Representative and one Coordinating Council User Representative.

1.1.2 Voting. All matters will be decided by a numerical vote. A numerical vote shall pass by the affirmative vote of a majority of the Coordinating Council Representatives present (either in person, by teleconference, or webcast) and voting. In case of a tie in votes on any motion, the motion shall not pass. There will be one vote per Coordinating Council Representative.

1.2 Committees and Working Groups. Committees and working groups will be established to advise and recommend initiatives and actions to the Coordinating Council.

1.2.1 Joint User Working Group(s). The Coordinating Council will establish joint user working group(s) to ensure end user needs are understood, coordinated, and addressed. The Coordinating Council may establish joint user working group(s) comprised of System users in all disciplines that use the System in accordance with Coordinating Council adopted policy applicable to those Systems where the policy has been ratified by that System’s governing body.

1.2.2 Other Joint Committees & Working Groups. The Coordinating Council will establish other joint committees and working groups in accordance with Coordinating Council adopted policy applicable to those Systems where the policy has been ratified by that System’s governing body.

1.3 Coordinating Council, Committee Support & Working Groups. As necessary, each System will provide direct support to the Coordinating Council and any committees by making their respective Executive Director (or equivalent) and staff available for advisement, meeting coordination, record keeping, and other duties.

Section 2. Term and Termination of Agreement; Expulsion of Parties; Addition of New Parties

2.1 Term. The term of this Master IGA shall begin _____, 20__ and continue until terminated as provided herein.

2.2 Termination

2.2.1 Termination For Convenience. A Party may terminate their participation in this Master IGA by delivering written notice to the other Parties. Such termination shall be effective on the date which is the earlier of (1) twenty-four (24) months after receipt of such notice by the non-terminating Parties or (2) a date agreed to by the non-terminating Parties.

2.2.2 Non-Appropriation. If any Party's performance under this Master IGA depends upon an appropriation of funds by their respective governing bodies, and if any Party's governing body fails to appropriate the funds necessary for performance, the affected Party or Parties may provide written notice of this failure to the other Parties and cancel either this Master IGA or the affected Task Order(s) (as defined in Section 4.1 below). Such written notice shall specify the effective date of such cancellation. Each Party shall give the other Parties as much advance notice as reasonably possible of a cancellation for non-appropriation. Notwithstanding the foregoing, each Party shall make good faith, reasonable efforts to seek appropriation of the funds necessary for such Party's performance under this Master IGA.

2.2.3 Party Termination. A Party's participation in the relationship established by this Master IGA may be terminated (resulting in a "Party Termination") upon the affirmative vote of a majority of the other Parties' System's governing bodies. A Party Termination will result in removal of the terminated Party's Coordinating Council Representatives from the Coordinating Council and the loss of the associated Coordinating Council voting rights, removal of the Party's representatives from user committees and working groups, cessation of the Party's participation in Collaborative Efforts (including all rights and privileges accruing as a result of such participation), and termination of the Party's participation in Task Orders. A Party Termination will take effect sixty (60) calendar days after completion of the vote, except that the Coordinating Council Representatives for the terminated Party shall be removed from the Coordinating Council and will lose associated voting rights effective immediately after a Termination vote.

2.2.4 Conflict of Interest. This Master IGA shall be subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511.

2.3 Post-Termination – Property Disposition

2.3.1 Continued Ownership. Upon termination by a Party of its participation in this Master IGA or upon a Party Termination, each Party shall continue to own: (i) all System resources that the Party owned prior to this Master IGA; and (ii) all System resources that were acquired pursuant to this Master IGA and any Task Order (as defined in Paragraph 4) signed by authorized representatives (as defined in Paragraph 9.12) of the Participating Parties (as defined in Paragraph 3.1 below) that identifies that Party or Parties as the owner of such System resources.

2.3.2 Shared System Resources. Upon termination by a Party of its participation in this Master IGA or upon a Party Termination, the Party that owns the System resources that are shared with the other Party or Parties shall cooperate with and give adequate time for the other Party or Parties to acquire a suitable replacement, remove any shared portion and/or work with the other Party or Parties to create and implement an action plan for the successful separation for the System resources that will no longer be available to it. During the post-termination period, the Party that owns the System resources will allow the other Parties to continue to use the System resources as necessary to carry on its operations for a maximum period of twelve (12) months.

2.4 Addition of New Parties. Any public entity who owns or operates a System may apply to become a Party to this Master IGA, entitled to all benefits and subject to all obligations accruing to the Parties (an “Application”). An applicant shall be admitted as a Party upon occurrence of all of the following events:

2.3.1 Applicant submits an Application to the Coordinating Council in writing.

2.3.2 The Coordinating Council will forward the Application to the respective Systems’ governing bodies for review and approval.

2.3.3 After approval by a majority of the respective Systems’ governing bodies, Applicant executes this Agreement, thereby becoming a Party.

Section 3. Collaboration on Acquisition and Use of System Resources

3.1 Authorization of Collaborative Efforts. This Master IGA authorizes two or more of the Parties (the “Participating Parties”), to collaborate on the acquisition, sharing, or use of communications related to the Participating Parties’ Systems resources (“Collaborative Effort(s)”).

3.2 Examples of Collaborative Efforts. The following is a non-exclusive list of potential Collaborative Efforts examples and is not intended to impose requirements or limit the potential joint, cooperative, or shared System resources or related services contemplated by this Master IGA:

3.2.1 Purchasing of equipment and related services.

3.2.2 Use of facilities and co-location of equipment.

3.2.3 Installation and use of connectivity and communications equipment.

3.2.4 Services such as maintenance of equipment.

3.2.5 Interoperable and/or operable use of each other’s Systems.

3.2.6 Research and development.

3.2.7 Staff resources and support.

3.2.8 Sharing administrative expenses incurred pursuant to this Master IGA.

3.2.9 Policies & procedures.

3.2.10 Strategic planning.

3.2.11 Grant applications.

3.2.12 Technical coordination and planning to ensure Systems compatibility.

3.2.13 Review performance of shared resources.

3.3 Limitation. The Parties understand that their authority to provide in-house services to each other or to share resources is limited and that any joint or cooperative effort under this Master IGA must be for beneficial projects that are within each of the Parties’ statutory authority and mission.

Section 4. Participating Parties’ Task Orders

4.1 Authorization of Task Orders. The Participating Parties may enter into a task order for any Collaborative Effort(s) ("Task Order").

4.2 Task Order Financing. Pursuant to A.R.S. Section 11-952(B)(3), Task Orders that will require expenditures by any Participating Party will include a budget and allocation of anticipated costs to the Participating Parties. A Participating Party shall not be obligated to pay costs in excess of its anticipated allocation without its written approval.

4.3 Scope. Examples of items that Task Orders may address include, but are not limited to, Parties, duration, duties and responsibilities, ownership, security and personnel requirements, authorization for access to data, capital asset control matters such as inventory and insurance coverage, contract management, shared usage parameters, hours of operation, reimbursement of costs, and accounting requirements.

4.4 Project Management. For any Collaborative Effort(s) requiring implementation planning and coordination, the Participating Parties will manage the project according to an adopted joint project management policy. For Collaborative Efforts where the Participating Parties have executed a Task Order, the joint project management policy will be set forth within the Task Order.

Section 5. Records

Each Party shall maintain accurate and complete accounting records in support of all invoicing to the other Parties in accordance with generally accepted government accounting practices, and shall provide copies of such records to the invoiced Party upon request by the invoiced Party.

Section 6. Confidential Information

6.1 Definition. "Confidential Information" means any information, whether in electronic, written, graphic, machine readable, or other tangible form of a confidential or proprietary nature including, but not limited to, system infrastructure and security information, technical data, engineering details, construction documents, equipment lists, programming configurations, and operational procedures.

6.2 Obligations Regarding Confidential Information. The Parties shall hold all Confidential Information in strict confidence and shall refrain from using Confidential Information received from other Parties for any purpose other than fulfillment of the receiving Party's duties under this Master IGA or an applicable Task Order. When a Party receives a public records request or subpoena seeking disclosure of Confidential Information relating to another Party or another Party's System, the Party receiving the public records request or subpoena shall promptly notify the other Party so that the other Party may have an opportunity to object to disclosure.

Section 7. Indemnification and Insurance

7.1 Indemnification. Each Party (the "Indemnifying Party") shall, to the extent permitted by law, defend, indemnify, and hold harmless, jointly and severally, the other Party and/or other Parties and each official, agent, or employee thereof (any such person being referred to herein as an "Indemnified Party") from all Liabilities (defined below) to the extent provided in the remainder of this Section 7.1. This indemnity applies to any and all losses, claims, actions, judgments, damages, expenses (including reasonable attorney fees), or liabilities ("Liabilities"), joint or several, which the Indemnified Party may be subject to in law or in equity, but only to the extent that such Liabilities arise out of or based upon the negligent or intentional misconduct of the Indemnifying Party. Where bodily injury, personal injury, death, or loss of or damage to property is the result of the joint negligence or misconduct of two of the Parties or

all the Parties, each Party's duty of indemnification will be in proportion to its allocable share of such joint negligence or misconduct.

7.2 Insurance. Each Party, at its cost, shall maintain comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence, insuring against all liability of that Party and its authorized representatives arising out of and in connection with that Party's use or occupancy of the facilities. This insurance shall include coverage of the liability assumed under the indemnification provisions of this Master IGA. If the policy is to be written with an annual aggregate limit, that limit shall be not less than \$2,000,000. Comprehensive general liability shall name the other Parties to this Master IGA as additional insureds, a copy of which shall be provided at Master IGA execution and thereafter to the other Parties upon request. Each Party shall maintain worker's compensation insurance as required by statute and employer's liability insurance in an amount not less than \$1,000,000 per occurrence, which may consist of self-insurance. All insurance policies shall provide that the policies cannot be canceled, renewed, or limited in scope of coverage or limits until and unless the insurer endeavors to provide thirty (30) calendar days' prior notice to the other Parties.

7.3 Self-Insurance. Notwithstanding the provisions of Section 7.2, the obligations of the Parties, with respect to the insurance specified in this Section 7 may be satisfied by the existence of a self-insurance program containing the same coverage and limits specified herein with respect to third-party insurance. The aforementioned requirement to name other Parties as additional insureds shall not apply with respect to self-insurance. Furthermore, Parties self-insuring under this Section 7.3 need not secure any formal endorsement providing that the policies cannot be canceled, renewed, or limited in scope of coverage or limits until and unless the insurer endeavors to provide thirty (30) calendar days' prior notice to the other Parties; however, such Parties agree to provide thirty (30) calendar days' prior notice to the other Parties in the event that applicable self-insurance programs are canceled, renewed, or limited in scope of coverage or limits.

Section 8. Notices

8.1 Notices. All notices given, or to be given, by any Party to another Party or to the other Parties shall be given in writing and either delivered: (i) in person; (ii) by registered or certified mail; (iii) by overnight commercial air courier or express service; or (iv) by email, so long as a hard copy of the notice is sent as provided by one of the methods set forth in (i) through (iii) of this paragraph. All notices shall be addressed to the Party at the address hereinafter set forth on the signatory page attached for each Party, or at such other address as any Party may designate by written notice. All notices, if sent by certified or registered mail, shall be deemed received upon actual receipt or three (3) business days after deposit in the United States mail; if delivered in person, notices shall be deemed received at the time it is personally served; if sent via overnight commercial air courier or express service, receipt shall be deemed effective one (1) day after the sending thereof; if sent via email, receipt shall be deemed effective as of the time the email is sent.

Section 9. General Provisions

9.1 Entire Agreement, Amendments. This Master IGA represents the entire agreement of the Parties with respect to its subject matter. This Master IGA shall not be changed, modified, or rescinded, except through a writing signed by all Parties.

9.2 Governing Law, Forum. It is mutually understood and agreed that this Master IGA will be governed by the laws of the State of Arizona, both as to interpretation and performance. Any lawsuit for the enforcement of this Master IGA, or any provision thereof, will be instituted only in the courts of the State of Arizona.

9.3 Headings Not Controlling. Headings used in this Master IGA are intended for convenience or reference only and shall not control or affect the meaning or construction of any provision of this Master IGA.

9.4 Severability. In the event any term or provision of this Master IGA is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the Master IGA shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

9.5 Nondiscrimination. The Parties agree to comply with all provisions of applicable federal, state, and local laws related to nondiscrimination, equal employment opportunity, and the Americans with Disabilities Act.

9.6 No Assignment. No Party shall assign or otherwise transfer this Master IGA or its rights or duties hereunder without the prior written consent of the other Parties. Any such assignment or other transfer, either voluntary or by operation of law, shall be void.

9.7 Surviving Provisions. The obligations under Section 2.2 (Termination), Section 2.3 (Post-Termination – Property Disposition), Section 4 (Participating Parties’ Task Orders) Section 4.1 through 4.3, Section 5 (Records), Section 6 (Confidential Information) section 6.1 through 6.2, Section 7 (Indemnification and Insurance) Section 7.1 through 7.3, Section 9.1 (Entire Agreement, Amendments), Section 9.2 (Governing Law, Forum), Section 9.3 (Headings Not Controlling), Section 9.4 (Severability), this Section 9.7 (Surviving Provisions), and any other Section which reasonably should survive, shall survive expiration or other termination of this Agreement.

9.10 Force Majeure. Any Party shall be excused for delay or failure to perform its obligations under this Agreement, in whole or in part, when and to the extent that such delay or failure is a result of causes beyond the control and without the fault or negligence of the Party unable to perform. Such causes include, without limitation, acts of God, acts of the public enemy, acts of the United States government, fires, floods, epidemics, quarantine restrictions, or embargoes.

9.11 Continuation of Master IGA. If any Party’s participation in this Master IGA terminates, all rights and duties under this Master IGA shall continue in full force and effect with respect to the remaining Parties to this Master IGA without further action.

9.12 Authorized Representatives; Counterparts. Authorized representatives shall sign this Master IGA on behalf of their respective Parties. This Master IGA may be signed in counterparts and the original signatures of all authorized representatives and of their attorneys may appear on separate signature pages.

9.13 Timing of Notice and Acts. If any act is required to be performed or notice given on a date which is a Saturday, Sunday or legal holiday recognized by the State of Arizona, the act or notice shall be performed or given on the next succeeding business day. Days herein shall include Saturdays, Sundays, and weekdays, except that as used herein the term “business day” shall exclude any day that is a Saturday, Sunday or legal holiday of the State of Arizona.

9.14 Time of the Essence. The Parties specifically agree time is of the essence of with respect to this Agreement and all provisions, obligations and conditions herein.

Section 10. Dispute Resolution

10.1 Dispute Resolution. Should any dispute arise in relation to this Master IGA or a Task Order, the Parties who are party to such dispute must make a good faith effort to reconcile such dispute through informal negotiation before filing an action in any court.

10.2 Default. A default occurs under this Master IGA when a Party breaches a material term or provision of this Master IGA or of a Task Order.

10.3 Notice. If a Party fails to cure its default within thirty (30) calendar days following receipt of written notice from another Party, that Party shall be considered in default.

10.4 Default Procedures. Upon the default by a Party, the Parties may, with the approval of the process by their governing bodies, refer the matter to non-binding mediation. The initiation of non-binding mediation shall not in any way impair the right of the non-defaulting Party(ies) to file a claim under Arizona Revised Statutes § 12-821.01 and that statute shall be tolled for the period from the date of the approval of the governing bodies to mediate until the date that the mediation is complete.

10.5 Attorney Fees. In the event of any litigation instituted under this Master IGA or a Task Order, the successful Party to any such action (whether or not prosecuted to judgment) shall recover from the other Party(ies) reasonable attorney fees and court costs as determined by the court.

[Signature pages to follow.]

IN WITNESS WHEREOF, the below-referenced Party has caused this Master IGA to be executed in counterpart:

The CITY OF PHOENIX, ARIZONA, an Arizona municipal corporation; for and on behalf of the Regional Wireless Cooperative as its Administrative Managing Member

By: _____
David Felix
Regional Wireless Cooperative Executive Director

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

Address:

City of Phoenix
Executive Director, Regional Wireless Cooperative
200 W. Washington St.
Phoenix, Arizona 85003-1611
RWCExecutiveDirector@phoenix.gov

Copy to:
City of Phoenix
Law Department
200 W. Washington St., 12th Floor
Phoenix, Arizona 85003-1611
c/o David Francis
david.francis@phoenix.gov

IN WITNESS WHEREOF, the below-referenced Party has caused this Master IGA to be executed in counterpart:

TOPAZ REGIONAL WIRELESS COOPERATIVE

By: The CITY OF MESA, ARIZONA, an Arizona municipal corporation

Its: Administrative Manager

Date: _____

By _____
City Manager

Christopher J. Brady
Printed Name

ATTEST:

City Clerk

Printed Name

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

City Attorney

Printed Name

Copy to:

William H. Anger
Engelman Berger, P.C.
3636 North Central, Suite 700
Phoenix, AZ 85018