



**PURCHASING ITEM
FOR
COUNCIL AGENDA**

1. Agenda Item Number:

18

2. Council Meeting Date:
February 12, 2015

TO: MAYOR & COUNCIL

3. Date Prepared: January 16, 2015

THROUGH: CITY MANAGER

4. Requesting Department: Police

5. SUBJECT: Payment of operations and maintenance costs, system upgrade agreement, and narrow banding as part of the Regional Wireless Cooperative.

6. RECOMMENDATION: Staff recommends City Council approve the payment of operations and maintenance costs, system upgrade agreement, and narrow banding for FY 14/15 to the City of Phoenix for participation in the Regional Wireless Cooperative in the amount of \$997,751.73.

7. HISTORICAL BACKGROUND/DISCUSSION: On October 22, 2009, City Council approved an agreement with the City of Phoenix and Motorola Solutions Inc., for the City's participation in the Regional Wireless Cooperative (RWC) Governance. This regionally based radio network provides seamless interoperable radio communications for multiple public safety and government agencies operating within the greater Phoenix metropolitan area.

The agreement provides for an annual operations and maintenance (O&M) fee for the maintenance of approximately 1,000 City of Chandler portable and vehicle radios used by Police; Fire, Health, and Medical; and other City departments. Quarterly payments in the amount of \$105,680.40 (First Quarter Invoice is attached) will be made to the City of Phoenix, for a total annual amount of \$422,721.60. Quarterly payments fiscal year to date were delayed pending resolution of an audit conducted by the City of Phoenix. With the audit now complete, staff is requesting approval for the payment.

Additionally, this agreement also includes an annual system upgrade assessment (SUA) of \$134,940.13 to provide ongoing software updates to ensure system compatibility. The total for O&M and SUA is \$557,661.73.

In addition, the Federal Communications Commission (FCC) has mandated a reduction in the amount of spectrum "space" utilized by public safety radio communications by December 31, 2016. This narrow banding mandate requires a change in communications technology that includes radios and infrastructure by the RWC. The expense of converting the RWC system to meet this requirement is spread out over a four-year plan. This is the second year of payments, and Chandler's assessed portion of the payment is \$440,090.00.

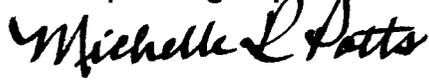
8. EVALUATION PROCESS: The City of Phoenix is the sole support for the regional wireless radio system. The operations and maintenance, system upgrades, and narrow banding in conjunction with the RWC is only available through the City of Phoenix.

9. FINANCIAL IMPLICATIONS: Funding for this payment is available in the amount of \$557,661.73 in account 101-2060-5818 (General Fund-Communications-Other Expenses) for the RWC Operations and Maintenance/Software Upgrade Agreement, as well as \$440,090.00 in account 401-2100-6419-6PD607 (General Government Capital-Police Capital-Other Equipment) for the Radio System Narrow Banding.

10. PROPOSED MOTION: Approve the payment of operations and maintenance costs, system upgrade agreement, and narrow banding for FY 14/15 to the City of Phoenix for participation in the Regional Wireless Cooperative in the amount of \$997,751.73.

APPROVALS

11. Requesting Department



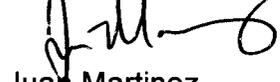
Michelle Potts, Police Communications Manager

11. Requesting Department



Sean Duggan, Chief of Police

13. Procurement Officer



Juan Martinez

14. City Manager



Rich Dlugas



CITY OF PHOENIX

251 West Washington Street
Phoenix, Arizona 85003-2295

Number/Date	400764816 10/16/2014
Due Date:	11/15/2014
Customer Number:	30000004
Contact/Phone	Kelli Butz (602) 534-3780

BILL TO:
 CHANDLER POLICE DEPT
 CITY OF CHANDLER
 MAIL STOP 804 PO BOX 4008
 CHANDLER AZ 85244-4008
 USA

SOLD TO:
 CHANDLER POLICE DEPT
 MAIL STOP 804 PO BOX 4008
 CHANDLER AZ 85244-4008

Item	Description	Qty	Rate	Unit	Amount
1	Operation / Maintenance Charges ENC DMT COSTS - 2ND QTR OF FY 14/15/16 920 SUBSCRIBERS @ \$38.25 PER MONTH FOR 3 MONTHS POLICE = 452 FIRE = 158 NUTR = 110				105,680.40
	Items total				\$ 105,680.40
	Taxes				
	Total amount due.....				\$ 105,680.40

PLEASE DETACH AND RETURN THIS PORTION WITH YOUR PAYMENT



CITY OF PHOENIX
 P.O. Box 29115
 Phoenix, AZ 85038-9115

Make check or money order payable to City of Phoenix
 Include your name and Customer No. on check or money order
 Payments can be made in person at 305 W. Washington Street. This
 statement is available in alternative formats upon request. TTY number
 is (602) 534-5500.

Check or Money Order _____
 Credit Card _____
 VISA MC AMEX DISCOVER OTHER _____
 Credit Card Account Number: _____ Zip Code: _____

Expiration Date: ____ / ____ / ____

Signature: _____
 (Credit Card Only)



Customer Number	Invoice Number	Invoice Date	Due Date	Amount Due
30000004	400764816	10/16/2014	11/15/2014	\$105,680.40

010030000004904007648167000000001056804096



CITY OF PHOENIX

251 West Washington Street
Phoenix, Arizona 85003-2295

Invoice	
Number/Date	400764836 10/16/2014
Due Date: 11/15/2014	
Customer Number:	30000004
Contact/Phone	Kelli Butz (602) 534-3780

BILL TO:
 CHANDLER POLICE DEPT
 CITY OF CHANDLER
 MAIL STOP 804 PO BOX 4008
 CHANDLER AZ 85244-4008
 USA

SOLD TO:
 CHANDLER POLICE DEPT
 MAIL STOP 804 PO BOX 4008
 CHANDLER AZ 85244-4008

Item	Description	Qty	Rate	Unit	Amount
1	Software Upgrade Agreement SPECIAL ASSESSMENT - SUATI SYSTEM UPGRADE BILLED TO ALL MEMBERS BASED ON TOTAL SUBSCRIBER COUNTS POLICE = 652 FIRE = 158 MUNI = 110	1	\$ 134,940.13	EA	\$ 134,940.13
	Items total				\$ 134,940.13
	Taxes				
	Total amount due.....				\$ 134,940.13

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 P.O. Box 29115
 Phoenix, AZ 85038-9115

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 Payments can be made in person at 305 W. Washington Street. This
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 is (602) 534-5500.*

Check or Money Order _____
 Credit Card _____
 VISA MC AMEXP DISCOVER OTHER _____
 Credit Card Account Number: _____ Zip Code: _____

Expiration Date: ___ / ___ / ___

Signature: _____
 (Credit Card Only)

Enter Amount Paid

Customer Number	Invoice Number	Invoice Date	Payment Due Date	Amount Due
30000004	400764836	10/16/2014	11/15/2014	\$134,940.13

010030000004904007648365000000001349401391



CITY OF PHOENIX

251 West Washington Street
Phoenix, Arizona 85003-2295

Invoice

Number/Date
400764854 10/16/2014

Due Date: 11/15/2014

Customer Number: **30000004**
Contact/Phone
Kelli Butz (602) 534-3780

BILL TO:

CHANDLER POLICE DEPT
CITY OF CHANDLER
MAIL STOP 804 PO BOX 4008
CHANDLER AZ 85244-4008
USA

SOLD TO:

CHANDLER POLICE DEPT
MAIL STOP 804 PO BOX 4008
CHANDLER AZ 85244-4008

Item	Description	Qty	Rate	Unit	Amount
1	Narrow Banding Upgrade SPECIAL ASSESSMENT - NARROW BANDING UPGRADE BILLED BASED ON FIXED SUBSCRIBER COUNT APPROVED BY THE BOARD POLICE = 697 FIRE = 159 MUNI = 111	1	\$ 440,090.00	1 EA	\$ 440,090.00
	Items total				\$ 440,090.00
	Taxes				
	Total amount due.....				\$ 440,090.00

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CITY OF PHOENIX
P.O. Box 29115
Phoenix, AZ 85038-9115

Make check or money order payable to City of Phoenix
Include your name and Customer No. on check or money order
Payments can be made in person at 305 W. Washington Street. This
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is (602) 534-5500.

Check or Money Order _____
Credit Card _____
VISA MC AMEXP DISCOVER OTHER _____
Credit Card Account Number: _____ Zip Code: _____

Expiration Date: ____ / ____ / ____

Signature: _____
(Credit Card Only)

Enter Amount Paid

Customer Number	Invoice Number	Invoice Date	Payment Due Date	Amount Due
30000004	400764854	10/16/2014	11/15/2014	\$440,090.00

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INTERGOVERNMENTAL AGREEMENT 10
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

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INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

1. Parties. The Parties (individually, a “Party”) to this Intergovernmental Agreement (“Agreement”) consist of all of the signatories to this Agreement. Parties to this Agreement shall automatically become Members of the Regional Wireless Cooperative Network, as detailed in Exhibit A.

2. Agreement.

2.1. The Parties enter into this Agreement for the purpose of:

- 2.1.1. Using their best efforts, through cooperation and pooling of common resources, for the mutual benefit of all Parties to own, operate, maintain and improve a regional radio communications network.
- 2.1.2. Planning, designing, constructing, operating, maintaining and financing the Regional Wireless Cooperative Network.
- 2.1.3. Providing regional communications operability and interoperability.
- 2.1.4. Providing regional communications cost effectively and using economies of scale.
- 2.1.5. Providing communications interoperability with other jurisdictions that are not a party to this Agreement, for the benefit of all Parties.

2.2. The Parties are authorized to enter into this Agreement by the joint exercise of powers 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.

2.3. The Parties agree to form the Regional Wireless Cooperative, an unincorporated association of the Parties, to jointly and cooperatively exercise their powers to achieve the purposes specified in paragraph 2.1.

2.4. The rules and policies governing the regulation and management of the Regional Wireless Cooperative’s internal affairs are set forth in a governance document, which is attached to this Agreement as Exhibit A and incorporated herein by this reference. Certain terms that are defined in Exhibit A are used in this Agreement. Those terms shall have the same meaning in this Agreement as such terms are defined in Exhibit A.

2.5. It is the intention of the Parties that Exhibit A be enforceable to the same extent as this Agreement. Exhibit A shall be subject to amendment as provided herein and shall be valid for the duration of this Agreement. Exhibit A is approved by all initial Parties and shall be binding upon any Parties that are admitted after the initial Parties. No additional Parties shall be admitted to the Regional Wireless Cooperative without first agreeing to be as bound by Exhibit A as are the initial Parties.

INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK

3. Term and Duration of Agreement; Dissolution.

3.1. This Agreement shall be binding upon each signing Party, and among and against all signing Parties 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, which includes appropriate action by the legislative or other governing body of the Party for the approval of the Agreement, determination by the Party's attorney that the Agreement is within the powers and authority of the Party, and the proper filing of the Agreement. In order for this Agreement to have legal effect, at least two (2) Parties must sign it. The "Effective Date" of this Agreement shall be the date upon which the second Party signs it. The initial term of this Agreement shall begin upon the signing of this Agreement by the second Party and end on October 31, 2018; thereafter, the Agreement will automatically renew for terms of ten (10) years. Notwithstanding the foregoing, this Agreement shall automatically terminate upon dissolution of the Regional Wireless Cooperative.

3.2. The Parties do not anticipate that the Regional Wireless Cooperative will be dissolved until it is no longer desirable and feasible for the Regional Wireless Cooperative to operate the Network or the Network is transferred to another governmental or non-profit entity.

3.3. If the Parties dissolve the Regional Wireless Cooperative other than by transferring the Network to a governmental or non-profit entity, the assets of the Regional Wireless Cooperative shall be returned to the Members in proportion to their contributions to the Regional Wireless Cooperative as determined in section 4.3 of Exhibit A. In the event of dissolution, real property that is owned separately by a Member, regardless of whether it is situated within a Member's boundaries or installed at a Member-owned communications facility shall be returned to such Member and credited to the Member's share of the assets to be returned. Real property purchased or owned separately by a Member shall remain the sole and separate property of that Member and shall not become the property of the Regional Wireless Cooperative. Real property that was purchased by the Regional Wireless Cooperative is owned by the Members of the Regional Wireless Cooperative in proportion to their financial contributions to such purchase, regardless of whose name title is in. Radio frequencies shall be dealt with in accordance with FCC licensing regulations.

4. Manner of Financing.

4.1. The cost of planning, designing, constructing, operating and maintaining the Network shall be paid in the manner specified in Exhibit A. An infrastructure replacement and enhancement program and an annual operating and maintenance budget shall be established and maintained as provided in Exhibit A. The costs paid by the Parties are expected to be the total costs for planning, designing, constructing, operating and maintaining the Network, less amounts, including grants and gifts, received from federal, state, regional or other funding sources.

4.2. Each Party agrees to timely pay its share of the cost of planning, designing, constructing, operating and maintaining the Network as specified in Exhibit A. Each Party

INTERGOVERNMENTAL AGREEMENT
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shall render its amounts payable to the Regional Wireless Cooperative no later than forty-five (45) days from the invoice date. The Regional Wireless Cooperative may collect interest at the rate of one percent (1%) per month for payments not received forty-five (45) days from the invoice date. The interest collected shall be deposited in the operating and maintenance budget and used to offset the costs of operation and maintenance.

4.3. It will be the responsibility of each Party to this Agreement to take the appropriate steps in conformity with state or local laws to ensure that it appropriates sufficient funds to cover the obligations it assumes under this Agreement. Each Party recognizes that the performance by the Parties under this Agreement may be dependent upon the appropriation of funds by that Party. Should any Party fail to appropriate the necessary funds, that Party may withdraw from this Agreement on the last day of the fiscal period for which funds are legally available, notwithstanding Section 6. Each Party agrees to give notice to the other Parties as soon as reasonably possible after the unavailability of funds comes to the Party's attention.

4.4. Each Party understands and acknowledges that claims and lawsuits may be filed for damages resulting from acts or omissions in connection with planning, designing, constructing, operating, maintaining financing, and cooperative ownership of the Network or that other unforeseen costs and expenses may be incurred in connection with the planning, designing, constructing, operating, maintaining, financing, and cooperative ownership of the Network.

The Parties agree that all damages, costs and expenses not specifically provided for in this Agreement, shall be shared by the Parties in proportion to each Party's share of the total weighted votes, in accordance with Section 3.2.1.3.2 of Exhibit A, at the time the claim or lawsuit, whichever first occurs, claim or lawsuit is first served on any Party or the unforeseen costs or expenses were incurred. Notwithstanding the foregoing, each Party shall be solely and separately responsible for its own gross negligence and willful misconduct, without joint liability by other Parties. Each Party shall promptly notify the Regional Wireless Cooperative and the Administrative Managing Member upon receipt of a claim or lawsuit relating to the Network. The Administrative Managing Member shall take the lead role on behalf of the Regional Wireless Cooperative in coordinating the investigation and defense of any claim or lawsuit made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Nothing in this section shall preclude any Party, at its expense, from providing its own legal counsel in connection with any claim or lawsuit made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Claims and lawsuits include any claims, losses, liability, costs, or expenses (including reasonable attorney fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage.

With regard to claims or lawsuits arising out of the ownership or maintenance of a member's owned or leased real property, such member (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other parties (as "Indemnitees") from and against any and all Claims and Lawsuits, but only to the extent that such Claims and Lawsuits which result in

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THE REGIONAL WIRELESS COOPERATIVE NETWORK

vicarious/derivative liability to the Indemnitees are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

4.5. The Regional Wireless Cooperative with the approval of its Board of Directors may apply for such federal, state or other grants as are made available for the planning, designing, constructing, operating, maintaining and financing the Network. The Executive Director or a Network Managing Member may submit the grant application on behalf of the Regional Wireless Cooperative in accordance with applicable laws, rules, regulations and procedures. The grant agreement to be entered into by the Regional Wireless Network and the Grantor shall be incorporated and made a part of this Agreement, and each Party agrees to be bound by the terms and conditions of the grant and to comply with and enforce the grant provisions within the limits of its jurisdiction. Any grant funds received will be used to reduce the cost of the project for which a grant application was submitted. The application for or the award of a grant shall not relieve a Party of its obligation to pay costs billed by the Regional Wireless Cooperative as provided in this Agreement. The Regional Wireless Cooperative shall credit grant funds to the Parties, in proportion to the amount of funding each Party contributes towards the grant project, as the grant funds are received.

4.6. Any Party that intends to individually submit a grant application that may benefit the Regional Wireless Cooperative or the Network shall first submit its proposal and grant application to the Regional Wireless Cooperative for its recommendation. With approval of the Board of Directors, the Party may submit its application to obtain the grant funding. Acceptance and use of any grant funds so obtained for the Regional Wireless Cooperative and the Network is subject to the discretion and use of the Board of Directors. A Party who applies for, is awarded, and accepts grant funds under this paragraph 4.6 is individually responsible for meeting all terms, conditions and obligations of the grant. The Regional Wireless Cooperative shall credit any grant funds received pursuant to this paragraph 4.6 to all Parties, in proportion to the amount of funding each Party contributes towards the grant project as the grant funds are received.

4.7. The Regional Wireless Cooperative's Board of Directors shall use the Administrative Managing Member's procurement procedures and insurance procurement procedures.

4.8. Risk Management. The Regional Wireless Cooperative's Board of Directors shall consult with the Administrative Managing Member to determine the insurance coverage appropriate to protect the Parties from risks concerning the Regional Wireless Cooperative and the Network. The Board of Directors shall direct the Administrative Managing Member to obtain such insurance on behalf of the Regional Wireless Cooperative. 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, or to place the cooperative and network under the Administrative Managing Member's insurance/self-insurance program. The cost of such insurance and/or self-insurance shall be shared by the parties in accordance with sections 4.2.1 and 4.2.2 of Exhibit A. For the sole purpose of placing coverage for the RWC and Network under the Administrative Managing Member's insurance/self-insurance program, if

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so directed by the Board of Directors, the Administrative Managing Member agrees to indemnify and defend the RWC and Network for the shared liabilities and costs set forth in Section 4.4 herein, subject to the exceptions set forth in Section 4.4.

4.9. The Parties understand and acknowledge that certain Network equipment, hardware, software and other personal property that is held jointly and owned in common by the Parties will become in time unfit or unnecessary for use by the Regional Wireless Cooperative. To provide for the disposal of such surplus Network personal property during the term of this Agreement, each Party agrees to obtain from its legislative or other governing body by ordinance, resolution or other applicable legal action, appropriate authorization enabling the Regional Wireless Cooperative to dispose of or sell by public auction, sealed bids, or negotiation any and all surplus Network personal property.

5. Obligations as Members. Each Party to this Agreement shall be a Member of the Regional Wireless Cooperative and shall comply with and be subject to the obligations of Members as set forth in Exhibit A, including the obligation to contribute to the cost of the Network. This Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law.

6. Voluntary Termination or Withdrawal as Members. Any Party may voluntarily terminate its participation in the Regional Wireless Cooperative by providing twenty-four (24) months' prior written notice to the other Parties. The Regional Wireless Cooperative Board of Directors will work with the withdrawing Member and remaining Parties to determine cost and operational impacts of the withdrawal. Subject to the conditions below, the withdrawing member retains rights to real property, personal property and frequencies as defined by the Agreement and as allowable by State and Federal law and/or regulation. Members voluntarily terminating their participation in the Regional Wireless Cooperative must comply with the following:

A. Transfer or relinquish to the Regional Wireless Cooperative any unexpended infrastructure replacement and expansion program funds and operating and maintenance funds.

B. Pay all fees and charges owed to the Regional Wireless Cooperative through the effective date of termination.

C. Agree to any additional or alternative terms and conditions reasonably related to essential Network operations as mutually determined by the Parties, including terms relating to the continuing use of radio frequencies, real estate, and real property.

D. Agree to pay for all costs to effect the withdrawal of the Member including costs to reconfigure the Network for the remaining Members.

E. Relinquish frequencies and equipment required for the incremental capacity necessary for use by other Members, including for 'roaming'.

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F. Allow the Regional Wireless Cooperative continued use of Member's communications facilities.

7. **Additional Parties.** Other cities, towns, counties, and Indian communities and other public agencies, as that term is defined by A.R.S. § 11-951, shall become additional parties to this Agreement and shall be bound by the terms of this Agreement at such times as those public agencies are admitted as Members of the Regional Wireless Cooperative.

8. **Failure to Pay Financial Obligation.**

8.1. If a Party is relieved from payment of its financial obligation to the Regional Wireless Cooperative as a matter of law, then the Regional Wireless Cooperative may suspend the Party's right to vote and participate in the affairs of the Regional Wireless Cooperative until such time as the Party has paid the difference between the Party's share of the costs and the amount the Party has paid for such costs.

8.2. Except as provided in paragraph 8.1, if a Party fails to pay a financial obligation within forty-five (45) days of the invoice date and then, upon notice by the Administrative Managing Member of the deficiency, fails to cure the non-payment within forty-five (45) days of the date of the deficiency notice, the Regional Wireless Cooperative shall suspend the Party's right to vote and participate in the affairs of the Regional Wireless Cooperative until such time as the Party has paid the difference between the Party's share of the costs and the amount the Party has paid for the costs.

9. **Open Meeting Law.** The Regional Wireless Cooperative, including the Board of Directors and the Executive Committee shall comply with A.R.S. §§ 38-431, et seq. (Arizona Open Meeting Law) in conducting meetings to the extent the law is applicable

10. **Records;Confidentiality.**

10.1. The Regional Wireless Cooperative shall comply with A.R.S. §§ 39-121 et seq. (Arizona Public Records Law) in maintaining and providing access to the records of the Regional Wireless Cooperative.

10.2. The Regional Wireless Cooperative shall make its financial records regarding the planning, designing, constructing, operating, maintaining and financing the Network available to any official or agent of a Party to this Agreement. Such request for inspection shall not be made more frequently than once a month.

10.3. Each Party to this Agreement agrees to make available to the Regional Wireless Cooperative its financial records related to planning, designing, constructing, operating, maintaining and financing the Network. Such request for inspection shall not be made more frequently than once a month.

INTERGOVERNMENTAL AGREEMENT TO
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10.4. To the extent permitted by law, the Parties shall treat 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 Network shall initially and immediately notify the Executive Director of such request before following any customary internal practices or procedures with regard to such request.

11. 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.

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

13. Cooperation.

13.1. 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 or related to the performance of this Agreement. This obligation includes performing an act that is not specifically referred to in this Agreement, so long as the obligation to perform such act is reasonably implied by the terms of this Agreement. Nothing in this Agreement shall be construed or interpreted to require the Regional Wireless Cooperative to be responsible for dispatching or otherwise causing its Members to respond to an event within another Member's jurisdiction.

13.2. 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, in good faith, jointly and cooperatively defend the validity of this Agreement.

13.3. The Parties may elect and shall have the right to seek specific performance, where feasible and practicable, by any Party of any or all of the obligations (except payment obligations) set forth in this Agreement. The Parties agree that, in accordance with Section 18.3 herein, 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.

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PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
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14. Amendment.

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

14.2. This Agreement, including Exhibit A, may be amended by one of the following two procedures:

14.2.1. RWC-Legislative Procedure. A proposed amendment to this Agreement, including Exhibit A, shall be submitted for approval to the Regional Wireless Cooperative's Board of Directors. Upon approval of the Board of Directors, each Party shall take appropriate steps in conformity with state and local law to authorize and approve the proposed amendment.

14.2.2. Formal Addendum Procedure. A proposed amendment to this Agreement, including Exhibit A, shall be presented to each Party in the form of an addendum, and, if approved by the Board of Directors, each Party will take appropriate steps in conformity with state and local law to authorize and approve the amendment.

14.3. Each Party shall file a copy of the appropriate resolution, ordinance or other recorded action by which its legislative or governing body approved the amendment with the Executive Director of the Regional Wireless Cooperative.

15. Existing and Future Agreements.

15.1. The Parties agree that the provisions of this Agreement shall be incorporated in any existing or future subcontracts between the Parties and any other person, political subdivision or public agency that contracts with the Parties to make use of the Network.

15.2. The Parties agree that they will not enter into subcontracts for the use of the Network without the prior approval of the Board of Directors, which shall have the authority to review the subcontracts for conformity with the rights and obligations set forth in this Agreement.

15.3. The Parties agree that this Agreement is a modification of all existing agreements between the Parties in regard to the Network. In the event of any conflict, inconsistency, or incongruity between the provisions of this Agreement and any of the provisions of any previous agreement between the Parties, the provisions of this Agreement shall in all respects govern and control.

15.4. Nothing in this Agreement shall be construed or interpreted:

15.4.1. To supersede prior existing mutual aid agreements or radio support agreements between or among the Parties.

15.4.2. To prohibit a Party from entering into separate agreements after the Effective Date of this Agreement concerning real estate, buildings and structures, and towers

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THE REGIONAL WIRELESS COOPERATIVE NETWORK

that the Party owns, leases, or licenses and that the Party authorizes and allows the Regional Wireless Cooperative to use as part of the Network, provided the separate agreements are consistent with this Agreement and compatible with the Regional Wireless Cooperative's use of the property for the Network.

15.4.3. To supersede prior existing agreements concerning real estate, buildings and structures, and towers that the Party owns, leases, or licenses and that the Party authorizes and allows the Regional Wireless Cooperative to use as part of the Network.

15.5. 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.

16. Notices.

16.1. Any notice, consent or other communication ("Notice") required or permitted under this Agreement shall be in writing unless otherwise specified herein and deposited in the U.S. mail, postage prepaid, registered or certified mail, return receipt requested.

16.2. Notice shall be deemed received five (5) days after the Notice is deposited in the U.S. mail as provided above. Any time period stated in a Notice shall be computed from the time the Notice is deemed received.

16.3. Any Party may change its mailing address or the person to receive Notice by notifying the other Parties as provided in this section. Routine notices shall be sent as provided in this Agreement.

17. Default And Cure.

17.1. Each Party agrees that it will perform all duties and obligations agreed to be performed by it under the terms and conditions of this Agreement, and that the unexcused failure of the Party to perform its duties and obligations shall constitute a default under this Agreement. In the event of a payment default by a Party, the Executive Director shall give written notice of the default, specifying the existence and the nature of the default. The defaulting Party shall have ten (10) days to remedy the default by making due payment. In the event of any performance default by a Party, the Executive Director shall give written notice of the default, specifying the existence and the nature of the default. The defaulting Party shall have thirty (30) days to remedy the default by rendering the necessary performance. In the event that the defaulting Party disputes an asserted default, the Party shall perform the disputed obligation, including making payment, but may do so under protest. The protest shall be in writing, and shall precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. After performance of the disputed obligation under protest, the Party disputing the asserted default shall have

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the right to submit the dispute to the Regional Wireless Cooperative's Board of Directors for a recommendation on a non-binding resolution under paragraph 18.

17.2. Notwithstanding the provisions of paragraph 17.1, in the event a Member disputes an amount billed, it shall do so in writing to the Executive Director within forty-five (45) days after the invoice date. The Member shall pay the disputed amount, but may do so under protest. The protest shall be in writing, and shall accompany the disputed payment if not previously paid and shall specify the reason upon which the protest is based. After the protest has been filed and the disputed amount has been paid, the dispute shall be handled in accordance with the dispute resolution process specified in paragraph 18. Payments not made under protest shall be deemed to be correct. If a protest is not filed within forty-five (45) days of the invoice date, the Member waives its right to file a protest.

17.3. If a party fails to cure a default within the time frames specified in 17.1, that party will no longer be in "Good Standing," as defined in Exhibit A, and shall lose voting privileges as specified in paragraph 3.2.1.3 of Exhibit A. If the Party is still in default after six consecutive months, the Board of Directors has the right to define additional cures up to and including expulsion from the RWC.

18. Alternative Dispute Resolution.

18.1. If any dispute, complaint or controversy, including a protest made pursuant to paragraph 17.1 or 17.2, ("dispute") arises between or among the Parties under this Agreement, the Parties agree that the dispute shall be brought to the Regional Wireless Cooperative's Board of Directors for non-binding dispute resolution. The Board of Directors shall establish appropriate and prompt procedures to govern the processing of complaints and the internal dispute resolution process. If a Party disagrees with the Board of Directors' recommendation, the Party may pursue the remedies otherwise provided for in this Agreement or provided at law.

18.2. The Parties agree that notwithstanding the existence of a dispute between or among the Parties, insofar as is possible under the terms of this Agreement, each Party shall continue to perform the obligations that are required of it and that are not related to the dispute. The Parties agree that at any point in the internal dispute resolution process, the Board of Directors may adopt and impose an interim emergency remedy to ensure the continuation of essential communication services until the dispute is resolved.

18.3. This Agreement shall not be construed or interpreted to prohibit a Party from seeking injunctive relief for the preservation of property.

18.4. In the event a dispute is not resolved pursuant to paragraph 18.1, the Parties agree to use arbitration to the extent required under A.R.S. § 12-133 and A.R.S. § 12-1518.

19. 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

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breach of the same or any other term, covenant or condition of this Agreement.

20. Performance and Uncontrollable Events.

20.1. All terms and conditions that are to be performed by the Parties or any of the Parties shall be performed at the sole expense of the Party so obligated, and if any other Party pays any sum of money or does any act that requires the payment of money by reason of the failure, neglect or refusal of the obligated Party to perform such term or condition, the sum of money paid by the other Party shall immediately be payable to the other Party by the Party obligated to perform.

20.2. 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, 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.

20.3. 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.

21. 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. No assignment shall be allowed without the prior written consent of the Board.

22. Entire Agreement. This Agreement, including Exhibit A, contains the entire agreement and understanding among the parties regarding the formation, governance and operations of the Regional Wireless Cooperative, and supersedes and replaces all related prior negotiations, agreements and proposed agreements, written or oral regarding its contents and purpose. 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.

23. 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

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shall be instituted only in the courts of Maricopa County, Arizona.

24. 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 Network. 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. This section shall not limit the discretion of the Parties to suspend a Party's right to vote and participate in the affairs of the Regional Wireless Cooperative as provided in section 8, entitled Failure To Pay Financial Obligation.

25. 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.