#15

FEB 2 6 2009

Chandler • Arizona
Where Values Make The Difference

MEMORANDUM **Police Department Memo No. 157**

DATE: FEBRUARY 16, 2009

TO: MAYOR AND COUNCIL

THRU: W. MARK PENTZ, CITY MANAGER
RICH DLUGAS, ASSISTANT CITY MANAGER RD
SHERRY KIYLER, POLICE CHIEF
JEFF CLARK, FIRE CHIEF

FROM: JOE GAYLORD, ASSISTANT POLICE CHIEF
MARC WALKER, ASSISTANT FIRE CHIEF

SUBJECT: **RESOLUTION #4265 PERTAINING TO**
PUBLIC SAFETY RADIO SYSTEM – REGIONAL WIRELESS COOPERATIVE (RWC) GOVERNANCE DOCUMENT

RECOMMENDATION: Staff recommends the City Council approve signing the Regional Wireless Cooperative Governance Document with the City of Phoenix allowing the City of Chandler to become part of the Regional Wireless Cooperative (RWC). This will allow public safety in the City of Chandler to become part of a public safety radio network. This will also provide the Fire and Police Departments the ability to communicate with one another in the field for better coordination at events.

BACKGROUND/DISCUSSION: Formation of the RWC represents a significant milestone for cities and towns in the Phoenix metropolitan area. The RWC will form a cooperative body that will work together for the mutual good of all to operate a regional radio network that will provide seamless, interoperable radio communications.

The need for all Public Safety agencies to be able to communicate during emergencies has been proven throughout the country in recent years. Currently, Chandler Fire and Chandler Police do not have direct communication capability between Fire and Police personnel. The Fire Department operates on a total Automatic Aid system where the closest fire truck is dispatched to an incident, regardless of jurisdiction. The Police Department needs to have interoperability in order to communicate with surrounding jurisdictions for calls for service or for any event that may occur where there would be a need for multiple agencies to respond.

The City of Chandler operates two different radio systems for Public Safety. The Fire Department is on a VHF radio system operated and owned by the City of Phoenix. The Police Department is on an 800 MHZ stand-alone system owned and operated by the City of Chandler. The current Police system is outdated that can no longer meet the operational needs of its end users, particularly police officers.

FINANCIAL IMPLICATIONS: At this time the signing of the RWC Governance Agreement does not commit the City of Chandler to any financial obligation. However, the RWC will provide the mechanism through which we may jointly pursue this endeavor. The costs will depend on the detailed design of the system. Once the design is established, we will return to Council for appropriate funding.

The Police Department currently has $15 million in bond approval to cover the cost of new towers, upgraded equipment for the current towers, and to upgrade the Police Department Communications Center. Cost estimates are one-time costs of $2.7 million for towers, and $6.9 million for Communications Center upgrades, for a total of $9.6 million. This estimate does not include design fees or the redesign of the communications tower at Fire Station #1, which is also work that will need to be completed.

PROPOSED MOTION: Move that City Council approve Resolution #4265 authorizing the Mayor to execute the IGA to plan, design, construct, operate, maintain and finance the Regional Wireless Cooperative Network

Attachment: RWC Governance Document

RESOLUTION NO. 4265

A RESOLUTION OF THE COUNCIL OF THE CITY OF CHANDLER, MARICOPA COUNTY, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE THE INTERGOVERNMENTAL AGREEMENT TO PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE THE REGIONAL WIRELESS COOPERATIVE NETWORK

WHEREAS, the Cities of Phoenix, Surprise, Goodyear, El Mirage, Tempe, Maricopa and Chandler, and the Town of Guadalupe, and the Sun Lakes Fire District, and Fire District of Sun City West (the "Parties") have agreed to enter an Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the Regional Wireless Cooperative Network ("IGA"); and

WHEREAS, the purposes of this IGA include, among others: (1) owning, operating, maintaining, and improving a regional radio communications network; (2) providing regional communications operability and interoperability; and (3) providing regional communications cost effectively and using economics of scale; and

WHEREAS, the interests of the City of Chandler will be served by entering the Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the Regional Wireless Cooperative Network.

NOW, THERFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, as follows:

1. The City Council hereby approves the Intergovernmental Agreement to Plan, Design, Construct, Operate, Maintain and Finance the Regional Cooperative Wireless Cooperative Network.

2. The Mayor of the City of Chandler is hereby authorized to execute this IGA.

3. That the various City officers and employees be and they hereby are authorized and directed to perform all acts as are necessary to give effect to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona this ____ day of _____, 2009.

ATTEST:

_____ _____

City Clerk Mayor

APPROVED AS TO FORM:

_____
City Attorney

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 4265 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the _____ day of _____, 2009, and that a quorum was present thereat.

_____
City Clerk

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

TABLE OF CONTENTS 124822

Parties 2
Agreement 2
Term and Duration of Agreement; Dissolution 3
Manner of Financing 3
Obligations as Members 6
Voluntary Termination or Withdrawal as Members 6
Additional Parties 7
Failure to Pay Financial Obligation 7
Open Meeting Law 7
Records;Confidentiality 7
Conflict of Interest 8
Compliance with Applicable Laws 8
Cooperation 8
Amendment 9
Existing and Future Agreements 9
Notices 10
Default And Cure 10
Alternative Dispute Resolution 11
Waiver. 11
Performance and Uncontrollable Events 12
Assignment and Binding Effect 12
Entire Agreement. 12
Governing Law 12
Severability. 13
Headings 13
Counterparts 14
Exhibit A A-1
Exhibit B B-1

124822

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.

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. <u>Manner of Financing</u>.

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

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

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

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'.

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.

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.

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

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

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

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

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.

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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. 124822-PHO

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

For City of Phoenix
City/Town/Agency Name

Date 10/24/08

By
(Signature)

Alton Washington, Asst. City Mgr.
Printed Name and Title

ATTEST:

(Signature) CITY CLERK

MARIO PANIAGUA - CITY CLERK
Printed Name and Title

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

William Bock
(Signature) ACTING City Attorney
R.F.

William Bock, Acting City Attorney
Printed Name and Title

124822-SUR

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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.

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

For City of Surprise
City/Town/Agency Name

By Charles R. Oliver 1/27/09
(Signature)

Charles R. Oliver, City Manger
Printed Name and Title

ATTEST:

(Signature)

Sherry Aguilar, City Clerk
Printed Name and Title

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

(Signature)

Michael Bailey, City Attorney
Printed Name and Title

INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK **124822-GOO**

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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.

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

For City of Goodyear
City/Town/Agency Name

Date 10/14/08

By _____
(Signature)

John F. Fischbach, City Manager
Printed Name and Title

CITY OF GOODYEAR INCORPORATED 1946 GOODYEAR, ARIZONA

ATTEST:

Maureen Scott
(Signature)

Maureen Scott Deputy City Clerk
Printed Name and Title

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

(Signature)

Roric Massey, City Attorney
Printed Name and Title

 124822-GUA

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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.

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

For Town of Guadalupe
City/Town/Agency Name

Date 11/13/08

By Francisco Montiel
(Signature)

Francisco Montiel MAYOR
Printed Name and Title

ATTEST:

Rosemary Aiello
(Signature)

Rosemary Aiello, Town Clerk
Printed Name and Title

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

(Signature)

David Ledyard, Town Attorney
Printed Name and Title

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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.

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

For: City of El Mirage

Date: November 13, 2008

By _____
Fred Waterman, Mayor

ATTEST:

_____
Richard Saathoff, City Clerk

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

_____
Richard Flaaen, City Attorney

INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK **124822-SLF**

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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.

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

For Sun Lakes Fire District
City/Town/Agency Name

Date Oct. 29, 2008

By [signature]
(Signature)

Michael Sellers, Chairman Board of Directors
Printed Name and Title

ATTEST: [signature]
(Signature)

Paul S. Wilson, Fire Chief
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona to the Sun Lakes Fire District.

[signature]
(Signature)

Attorney for Sun Lakes F.D.
Printed Name and Title

 124822-TEM

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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.

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

For City of Tempe
City/Town/Agency Name

By
(Signature)

Mayor Hugh Hallman
Printed Name and Title

ATTEST:
(Signature)

City Clerk Jan Hort
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona to the City of Tempe
(Signature)

Andrew B. Ching/City Attorney
Printed Name and Title

INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE REGIONAL WIRELESS COOPERATIVE NETWORK **124822-SCW**

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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.

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

For Fire District of Sun City West
City/Town/Agency Name

Date 10-22-08

By Dusty Rhodes
(Signature)

Dusty Rhodes BO CHAIR
Printed Name and Title

ATTEST:

William W. Hamel
(Signature)

William W. Hamel - Clerk of Board
Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona to the Fire District of Sun City West

(Signature)

Michael N. Widener, Of Counsel
Printed Name and Title
Bonnett, Fairbourn, Friedman + Balint, P.C.

124822-MAR

26. Counterparts. This Agreement, which includes Exhibit A, "Regional Wireless Cooperative Governance Document," 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.

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

For City of Maricopa
City/Town/Agency Name

By _____
(Signature)

Anthony Smith, Mayor
Printed Name and Title

ATTEST:
_____
(Signature)

VANESSA BUERAS, CITY CLERK
Printed Name and Title

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

_____
(Signature)

TINA VANNUCCI, CITY ATTORNEY
Printed Name and Title

EXHIBIT A
REGIONAL WIRELESS COOPERATIVE GOVERNANCE DOCUMENT

TABLE OF CONTENTS

DEFINITIONS 2
MANAGING MEMBERS 5
- Network Managing Member 5
- Administrative Managing Member 6

RWC STRUCTURE 6
- Radio Network Membership and Participants 7
  - Members 7
  - Associates 7
  - Interoperability Participants 7
  - Conditional Participants 7
  - Member Admission 8
- Radio Network Membership and Participants 9
  - Board of Directors 9
  - Executive Committee 12
  - Executive Director 13
  - Operations Committee 14

FINANCIAL MANAGEMENT 15
- Budget and Financial Reporting 15
  - Preliminary Budget 15
  - Five-Year Financial Forecast 15
  - Fund Balance Report 15
  - Activity Statements 16
  - Year-end Expenditure Reporting 16
- Funding 16
  - Annual Membership Fee 17
  - Special Assessments 20
  - Grants 21
- Members' Equity 21
- Annual Audit 22

RWC ASSETS 22
INSURANCE 23
- Real Property 23
- Personal Property 23
- Liability Insurance 23
- Insurance Programs 23

SERVICES 24
- Programming and Reprogramming 24
- Encryption 24
- Network Management 24
- Interoperability 24
- Training 24

PERFORMANCE AND OPERATION 24
MAINTENANCE 25
- Maintenance Plans Intra/Inter Agency 25
- Responsibility for Repair of Subscriber Units 25

EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT

1. DEFINITIONS

In this agreement, unless the context otherwise requires, the following terms mean:

Term	Definition
Administrative Managing Member	**The Managing Member responsible for the administration and financial management of the RWC.**
Alternate Representative	**A person designated by a Member to serve as an alternate for a Member's Representative and to have the authority specified in this Agreement.**
Annual Membership Fee	**Fee paid by all Members to cover the cost of RWC Administrative Services, Network Operations and Maintenance Services, and Network Infrastructure Replacement and Enhancement Projects.**
Associate	**A non-member entity that is authorized by the Board of Directors to use the Network to support an existing Member.**
Board of Directors	**The ruling body of the RWC that is comprised of one representative from each Member.**
Conditional Participant	**A non-member entity authorized by the Board of Directors to temporarily use the Network for special events, tactical situations or emergency circumstances.**
Executive Committee	**The RWC committee responsible for evaluating all RWC proposals and recommendations prior to submission to the Board of Directors.**
Executive Director	**The chief administrative officer responsible for coordination of RWC and Network activities.**
Fiscal Year	**The twelve (12) month accounting period for budgeting and expenditure reporting that commences on the first day of July and ends on the thirtieth day of June.**
Good Standing	**A Member who attends at least one Board meeting per twelve (12) month period, is current in all fees owed to the RWC, and whose vote is not suspended because the Party is relieved from payment as a matter of law.**
Impact Assessment	**The evaluation method used to identify the Network modifications and capital investment needed to add a new Member or change how an existing Member uses the Network.**

Infrastructure Replacement and Enhancement Fund	**The fund of monies set aside from the Annual Membership Fee to fund capital replacements, enhancements, and construction of the Network.**
Interoperability	**An essential communication link within Public Safety and Public Service wireless communications systems which permits units from two or more different agencies to interact with one another and to exchange information according to a prescribed method in order to achieve predictable results, as defined by the Public Safety Wireless Advisory Committee in a 1996 report to the FCC and NTIA.**
Interoperability Participant	**A non-Member entity authorized by the Board of Directors to use the Network for the purpose of participating in intermittent interoperable situations or circumstances.**
Maintenance Manager	**A Member or vendor responsible for providing maintenance for some portion of the Network.**
Member	**Any entity that executes and becomes a party to the Intergovernmental Agreement to plan, design, construct, operate, maintain, and finance the RWC Network.**
Network	**The Public Safety and Public Service communications system that is planned, designed, constructed, operated, maintained, and financed by the RWC, including all real estate, real property and personal property that is purchased or licensed by the RWC or owned or licensed by a Member, and the radio system originally built by the City of Phoenix known as PRWN.**
Network Infrastructure Replacement and Enhancement Projects	**Projects approved by the Board of Directors to replace, expand, or enhance the Network infrastructure funded through the Annual Membership Fee.**
Network Managing Member	**The Member or Members who are responsible for the day to day operations of the Network.**
Network Maintenance Services	**Services provided to the RWC by a Maintenance Manager to ensure physical operation of all or some portion of the Network.**
Network Operations Services	**Services provided to the RWC by a Network Managing Member to ensure optimal operation of the Network.**

Numerical Vote	**A vote by Members of the Board of Directors voting on the basis of one vote per Member.**
Operations Working Group	**A staff working group consisting of representatives of the Members that is assembled by the Executive Director to address Network operational issues.**
Parties	**All Members collectively.**
Party	**Any Member individually.**
PRWN	**The portion of the combined Network built by the City of Phoenix and known as the Phoenix Regional Wireless Network.**
Public Safety	**All federal, state, local, and Indian community law enforcement, fire service, emergency management and disaster preparedness agencies.**
Public Service	**All public works, transportation, and other agencies whose primary responsibility is providing residents with services other than Public Safety services.**
Regional Wireless Cooperative	**The unincorporated association that was formed by the Parties to jointly and cooperatively plan, design, construct, operate, maintain, and finance the Network.**
Representative	**The person designated by a Member to act on behalf of the Member on all matters concerning the RWC.**
RWC Administrative Services	**Services provided to the RWC by the Administrative Managing Member and the Executive Director in the areas of organizational management, accounting and budget, procurement and contracting, legal and all other duties as assigned by the Board of Directors.**
Special Assessment	**Fee assessed by the Board of Directors to pay the cost of unplanned projects such as disaster recovery, the use of the Network by an Interoperability or Conditional Participant, or system changes or expansions not previously included in the budget. Special Assessments may be charged proportionately or individually and need not be equal among Members.**
Subscriber Unit	**A voice or data unit in use on the Network (e.g., operating portable, mobile, control station or console). Subscriber Unit shall include a cache radio and a spare radio that has been assigned a valid system ID.**

Subscriber Units	**The total number of Subscriber Units in use on the Network.**
Talkgroup	**A defined organizational grouping of radio users who need to communicate with one another.**
Weighted Vote	**A vote by Members of the Board of Directors voting on the basis of weight according to share of total Subscriber Units as more fully described in Section 3.2.1.3.2.**

2. MANAGING MEMBERS

The City of Phoenix ("Phoenix") shall serve as the Maintenance Manager and Network Managing Member responsible for the day-to-day operations and maintenance of the Network. Phoenix shall also serve as the Administrative Managing Member responsible for the day-to-day management of the RWC organization and finances. The RWC may change and/or designate additional Maintenance Managers to maintain specific portions of the Network as appropriate. The RWC may change and/or designate additional Network Managing Members as the Network architecture changes to include specialized components such as county, state or federal sub-systems. Maintenance Managers and Administrative and Network Managing Members will be reimbursed by the RWC Membership for all costs incurred as a result of performing their respective responsibilities. Management of construction projects and infrastructure added subsequent to this Agreement shall be determined by the Board of Directors.

2.1. Network Managing Member

A Network Managing Member shall have the following duties:

2.1.1. Manage and allocate Subscriber Unit identifications and priorities.

2.1.2. Manage and allocate Talkgroup identifications and priorities.

2.1.3. Collect and report statistical data of Network utilization.

2.1.4. Maintain, optimize, and backup Network databases.

2.1.5. Operate and maintain the Network and perform any necessary inspections.

2.1.6. Identify, track, and resolve Network problems.

2.1.7. Establish and maintain a disaster recovery plan.

2.1.8. Perform frequency management functions and hold licenses for RWC frequencies issued by the FCC.

2.1.9. Implement Board of Directors' policies and procedures.

2.1.10. Provide the support staff necessary to perform Network managing duties.

2.1.11. Inform the Executive and Operations Working Groups of Network issues.

2.1.12. Perform all other duties as assigned by the Board of Directors.

2.2. Administrative Managing Member

As the Administrative Managing Member, Phoenix shall have the following powers and duties:

2.2.1. Appoint an Executive Director, subject to the approval of the Board of Directors.

2.2.2. Establish and maintain an accounting and budget system.

2.2.3. Collect and disburse monies.

2.2.4. Procure general goods and services and professional services for the RWC.

2.2.5. Contract with other federal, state, and local agencies as required to carry out the purposes of the RWC.

2.2.6. Serve as the contracting authority for the RWC.

2.2.7. Apply for and, if awarded, accept grants and gifts on behalf of the RWC.

2.2.8. Maintain inventory of all assets owned by and/or used on behalf of the RWC.

2.2.9. Provide reports as required by the Board of Directors.

2.2.10. Perform all other duties as assigned by the Board of Directors.

2.3. Maintenance Manager

A Maintenance Manager shall have the following duties:

2.3.1. Maintain that portion of the Network assigned by the Regional Wireless Cooperative.

2.3.2. Comply with all policies and procedures established by the Regional Wireless Cooperative.

2.3.3. Provide reports as required by the Board of Directors.

2.3.4. Support the Administrative Managing Member and Network Managing Members with information required to develop and manage budgets, inventory and maintenance history.

3. RWC STRUCTURE -

EXHIBIT A
REGIONAL WIRELESS COOPERATIVE
GOVERNANCE DOCUMENT

The RWC structure for use, operations, maintenance and enhancement to the Network is defined as follows:

3.1. Radio Network Membership and Participants

The various categories of Membership shall be as follows:

3.1.1. Members

The RWC Membership shall be composed of the initial Members and any other entity that is admitted in accordance with Section 3.1.5 of this Agreement. Entity means any city, town, county, state, Indian nation, fire district or other separately constituted public entity. A municipal, county or state agency, department, or division does not constitute a separate entity for Membership purposes. A municipal, county or state agency, department, or division shall be represented by its corresponding city, town, county, state, Indian nation, or separate entity. Each city, town, county, state, Indian nation, fire district or separate entity shall constitute one member of the RWC.

3.1.2. Associates

An entity may become an RWC Associate if the entity: (1) is under contract to a Member that uses the Network to provide public safety or public services and is authorized by the Board of Directors to use the Network to support the contracted activities, or periodically supports public safety services with an existing Member; and (2) is compliant with the conditions as set forth by the Board of Directors. Associates have no RWC voting rights or representation on the Board of Directors or the Executive Committee, but may have a representative on the Operations Working Group. Unless directed otherwise by the Board of Directors, fees or costs and weighted votes connected with an Associate's use of the Network shall be assessed to the Member supported by the Associate.

3.1.3. Interoperability Participants

If authorized, and subject to the conditions imposed by the Board of Directors, an Interoperability Participant may use the Network to support existing Members with intermittent interoperable situations. Interoperability Participants shall have no RWC voting rights or representation on the Board of Directors, Executive Committee or Operations Working Group. Unless directed otherwise by the Board of Directors, no fees and costs or weighted votes will be assessed to Interoperability Participants.

3.1.4. Conditional Participants

A non-Member entity may use the Network on a temporary basis for special events, tactical situations or emergency circumstances in support of an existing Member, if authorized by the Board of Directors. Conditional Participants have no RWC voting rights or representation on the Board of Directors, Executive Committee or Operations Working Group. Unless directed otherwise by the Board of Directors, no fees and costs or weighted votes will be assessed to

Conditional Participants. In an emergency the Executive Director may authorize the addition of a Conditional Participant, but continuation of the Conditional Participant must be approved or disapproved by the Board of Directors at their next meeting.

3.1.5. Member Admission

Any entity in the Network service and expansion area, as defined by the Board of Directors, may apply for Membership. An applicant shall be admitted as a Member upon occurrence of all the following events:

- Applicant submits a written request for RWC membership to the Board of Directors;
- Board of Directors approves applicant's written request;
- Applicant enters into an agreement with the RWC that specifies the fees and costs the applicant shall pay to the RWC pursuant to Section 4 of this Agreement;
- Applicant meets all conditions imposed by the Board of Directors; and
- Applicant executes and becomes a party to this Agreement.

3.1.5.1. Evaluation Factors

The Board of Directors has the sole and absolute discretion to either summarily deny or consider applicants for Membership status. If the Board of Directors elects to consider an application, the RWC will conduct an Impact Assessment to determine costs, risks and benefits to the RWC. The applicant shall pay the cost of the Impact Assessment prior to commencement of the analysis.

After completion of the Impact Assessment, the Executive Director, at the direction of the Operations Working Group, will develop a written recommendation, complete with financial and Network operational impact statements, for Executive Committee review and Board of Directors approval.

The RWC shall evaluate all requests giving the highest priority to maintaining service for public safety. The RWC shall not admit non-public-safety entities if such admittance would compromise the performance of the radio system in addressing public safety. The RWC will evaluate requests for new membership using the following factors:

- Impact on Network Radio Frequency (RF) coverage;
- Impact on the Network Grade of Service (GOS);
- Interoperability requirements (e.g., extent of wide area roaming for both the existing and new members);

- Need for additional infrastructure;
- Regulatory constraints;
- Applicant's infrastructure;
- Applicant's user needs assessment;
- Backhaul availability;
- Cost impacts;
- Impact on current operations;
- Roaming impact on existing Members;
- Benefits to the RWC to admit the applicant; and

Additional factors as determined by the RWC.

3.2. RWC Organization

The RWC organization shall have a Board of Directors, Executive Committee, and an Executive Director. An organization chart of the RWC is attached as Exhibit B.

3.2.1. Board of Directors

The Board of Directors shall set RWC policy, establish funding, approve membership, and exercise any other authorized powers and duties. The Board of Directors shall act only by formal recorded action.

3.2.1.1.Members

The Board of Directors shall consist of the Representatives of the Members of the Regional Wireless Cooperative.

3.2.1.1.1. Representatives

Each Member is entitled to appoint one person to serve as that Member's Representative and one or more persons to serve as an Alternate Representative. The Member shall rank the Alternate Representatives in the order that they shall serve when the Representative is absent. If the Representative is not present at a meeting, then the Alternate Representative of the Member with the highest rank who is present shall act temporarily in place of the Representative and may exercise all powers of the Representative.

The Member shall notify the Executive Director in writing of the person or persons who serve as that Member's Representative or Alternate Representatives. The appointment is effective when the Executive Director receives the written notice.

The Representative or Alternate Representative(s) shall be vested with the authority to lawfully act on the Member's behalf with respect to the RWC. Each Member shall be bound by the acts of its Representative and/or Alternate Representative(s), and the RWC may rely on the act of a Representative and/or Alternate Representative(s) the same as if such act were done by the Member.

3.2.1.1.2. Removal or Replacement of Representative

A Member may remove or replace its Representative and Alternate Representative at any time by giving written notice to the Executive Director. The removal or replacement of a Representative or Alternate Representative is effective when the Executive Director receives the notice.

3.2.1.2.Meetings

The Board of Directors' shall hold regular meetings monthly, except to the extent that, and for such periods of time as, the Board of Directors shall determine that regular meetings should be held more or less frequently.

3.2.1.2.1. Chair and Vice-Chair

The Board of Directors shall elect one of its Members as the Chair. The Chair shall be the presiding officer of the Board of Directors and shall have a voice and vote in all Board of Directors' proceedings. The Chair shall serve a two-year term. No Member shall serve two consecutive terms as Chair. The Board of Directors shall elect one of its Members as Vice-Chair, who shall execute the duties of the Chair during the absence or disability of the Chair. During the absence or disability of the Chair and Vice-Chair, the Board of Directors shall elect a presiding officer for the meeting.

3.2.1.2.2. Special Meetings

Two or more Members with approval of the Chair may call a special meeting of the Board of Directors upon a minimum of three (3) working days notice to the other Members. In the event of an emergency, a meeting may be scheduled and noticed with less than three (3) working days notice, provided that a Quorum is present and appropriate notice is given.

3.2.1.2.3. Notice and Agenda

The Executive Director shall prepare the notice, agenda, and minutes of Board of Directors' meetings. A Member may add an item to be considered by the Board of Directors to the agenda by timely notifying the Chair and the Executive Director. The Executive Director shall provide the notice and agenda of a Board of Directors' meeting to each Member with at least as much notice as is given to the public.

3.2.1.2.4. Quorum

A quorum is required to conduct business. To constitute a quorum, a majority of all Members must be present.

3.2.1.2.5. Attendance

Upon approval by the Chair, a Member may attend and participate in a meeting by teleconference or video-conference, and such attendance and participation shall have the same effect as if the Member were present in person.

3.2.1.2.6. Rules

The Board of Directors shall establish rules for its proceedings. An item not specifically covered by the rules established by the Board of Directors or by law shall be decided by the presiding officer using the latest standard edition of Robert's Rules of Order.

3.2.1.3.Voting Methodology

It is contemplated that all Members will strive to promote cooperation and the welfare of the Regional Wireless Cooperative by consensus decision making. Each Member attending a meeting of the Board of Directors is required to vote on all legal matters to be decided by the Board of Directors at that meeting. A voluntary abstention, or a vote excused by applicable federal or state conflict of interest laws shall not be counted as a vote, neither affirmative nor negative. Only Members in Good Standing are allowed to vote.

The voting rights of a Member shall be suspended for non-payment of the Member's financial obligations to the Regional Wireless Cooperative, in accordance with the IGA, Section 8, Failure to Pay Financial Obligation. If a Member's voting rights are suspended, this shall not affect the number of Weighted Votes of the other Members or the number of Weighted Votes required to decide a matter. The Weighted Votes of the Member whose voting rights have been suspended shall not be counted as being voted in favor of or against a matter.

3.2.1.3.1. Numerical Voting

All matters shall be decided by a Numerical Vote, provided that any Member may call for a Weighted Vote at any time before or after the Numerical Vote if the call for the Weighted Vote is made before adjournment of the meeting at which the Numerical Vote is taken. A Numerical Vote shall pass by the affirmative vote of a majority of the Members of the Board of Directors present and voting. In case of a tie in votes on any motion, the motion shall be considered lost. If a Weighted Vote is taken, the Numerical Vote shall have no effect unless it is in accord with the Weighted Vote.

3.2.1.3.2. Weighted Voting

Each Member of the Board of Directors shall have the number of Weighted Votes that are calculated in accordance with the following formula: Weighted Votes = 100 x (Total of

Member's Subscriber Units/Total Network Subscriber Units). The number of Weighted Votes of each Member shall be recalculated at the beginning of each quarter or whenever a new Member joins the RWC.

A Weighted Vote shall pass by both the affirmative vote of a majority of the Members of the Board of Directors voting and the affirmative vote of Members representing eighty percent (80%) of the Weighted Votes of the Members voting. If the Weighted Vote does not pass, the original Numerical Vote has no effect. A Weighted Vote shall be taken on a roll call basis.

In the event a Weighted Vote does not pass and the Board of Directors is unable to decide the matter despite further discussion and another vote or votes, any Member may call for mediation to attempt to resolve the matter.

3.2.2. Executive Committee

The Executive Committee shall review and approve all proposals and recommendations, budget and financial reports, Network performance reports, and Board of Directors meeting agendas prior to submittal to the Board of Directors. The Executive Committee shall have the authority to return proposals and recommendations back to the originator for review and revision. The Executive Committee shall identify for the Board of Directors performance issues and recommendations for Network enhancements and construction.

At least one Representative from the Executive Committee shall attend each Board of Directors meeting.

3.2.2.1.Representation

The Executive Committee shall consist of five Representatives appointed by the Board of Directors. Representatives, selected from the RWC membership, shall consist of: one (1) Police Department executive manager; one (1) Fire Department executive manager; one (1) Municipal executive manager; one (1) Chief Information Officer (or equivalent); and one (1) executive manager from a Network Managing Member. The Executive Committee shall not be comprised of Representatives from only one Member. Every two years the Board of Directors shall review the Executive Committee representation.

3.2.2.1.1. Chair

The Executive Committee shall elect one of its Representatives as Chair. The Chair shall be the presiding officer of the Executive Committee and shall serve a two-year term. The Chair shall not serve two consecutive terms.

The Executive Committee shall elect one of its Representatives as Vice-Chair. The Vice-Chair shall execute the duties of the Chair during the absence or disability of the Chair.

During the absence or disability of the Chair and Vice Chair, the Executive Committee shall elect a presiding officer for the meeting.

3.2.2.2. Meetings

The Executive Committee will conduct regularly scheduled meetings. These meetings shall be held at least once monthly prior to the Board of Directors' meeting. Two (2) or more Representatives, with the approval of the Chair, may call a special meeting of the Executive Committee upon a minimum of three (3) working days notice to the other Representatives. In the event of an emergency, a meeting may be scheduled and noticed with less than three (3) working days notice, provided that a Quorum is present and appropriate notice is given.

3.2.2.2.1. Quorum

To constitute a quorum, there shall be at least three (3) Executive Committee Representatives present.

3.2.2.2.2. Attendance

Subject to approval by the Executive Committee Chair, a Representative may attend and participate in a meeting by teleconference or video conference, and such attendance and participation shall have the same effect as if the Representative were present in person.

3.2.2.3. Voting Methodology

A quorum shall be present to conduct business. A majority vote is required to approve any action taken by the Executive Committee.

3.2.3. Executive Director

The Administrative Managing Member, subject to the approval of the Board of Directors, shall appoint an Executive Director to perform RWC administrative duties. The Executive Director will report to the Executive Committee and serve as an ex officio, non-voting member of the RWC Board of Directors, and Executive Committee. The Executive Director shall:

- Maintain contact information for all Board of Directors, Executive Committee, and working group representatives;
- Attend all meetings and coordinate efforts of the Board of Directors, Executive Committee, and Operations Working Group;
- Prepare and maintain meeting notices, agendas and minutes for the Board of Directors and Executive Committee and Operations Working Group;
- Manage the overall administrative organizational structure and staffing of the RWC;
- Assemble working groups, in addition to the Operations Working Group, as necessary to address operational and technical issues;

- Prepare and submit to the Executive Committee and the Board of Directors revenue and expenditure budgets and financial reports that follow standard accounting practices;
- Update fee schedules and provide billing and cost recovery services using standard accounting practices;
- Maintain an inventory of all Network infrastructure and real property used on behalf of the RWC;
- Provide monthly Network performance reports;
- Maintain contact information for all Members and member agencies of the Network;
- Serve as the custodian of records for the RWC and maintain this Agreement and all other records of the RWC, in accordance with the records retention and disposition schedule of the City of Phoenix;
- Create and annually update a five-year plan for approval by the Executive Committee and the Board of Directors.
- Maintain operating procedures and policies; and
- Perform other duties as directed by the Board of Directors and the Executive Committee.

3.2.4. Operations Working Group

The Operations Working Group shall be responsible for addressing Network operational issues and maintaining Board approved comprehensive policies and procedures for the operation and maintenance of the Network. The Operations Working Group shall review the RWC policies and procedures on an as needed basis, but not less than bi-annually, and shall submit necessary revisions to the Executive Director for Board of Directors' approval.

3.2.4.1. Representation

Each Member may have up to three (3) representatives ("Agency Representatives"), with one (1) Agency Representative each from a Law Enforcement Agency, Fire Services Agency and Municipal Agency. However, each Member may only have an Agency Representative from each agency for which the Member has actual users on the Network. The Agency Representatives will act as liaisons to their respective agencies and are responsible for promptly notifying the Operations Working Group of issues potentially affecting Network operations.

In addition to their respective Agency Representatives, each Network Managing Member will appoint one (1) Network Management and one (1) Maintenance Representative. The Network Management and Maintenance Representatives will provide technical expertise to assist Agency Representatives in making decisions regarding potential actions on the Network.

4. FINANCIAL MANAGEMENT

The Administrative Managing Member, under the direction of the Executive Director, shall be responsible for all financial management responsibilities including, but not limited to, fund management, budget development, rates and fees, Member billing, procurement, financial reporting, and financial audits.

4.1. Budget and Financial Reporting

The Executive Director, in cooperation with the Operations Working Group, shall prepare and present to the Executive Committee, by November of each year, a Preliminary Budget for the subsequent fiscal year, a Five-Year Financial Forecast, and Fund Balance Reports. The Preliminary Budget shall include all operational and maintenance costs, as well as planned capital costs for the upcoming year. The Five-Year Financial Forecast shall include projected revenue, operational and maintenance costs, capital costs, and fund balances for the five years following the Preliminary Budget period. All significant issues and financial assumptions influencing the preparation of these reports shall be detailed and included as a part of the presentation. After presentation to the Executive Committee, the Preliminary Budget, Five-Year Financial Forecast, Fund Balance Reports, and the presentation of significant issues and financial assumptions shall be forwarded to the Board of Directors for approval. The Board of Directors shall adopt each subsequent fiscal year's final operational and capital budget by December of the prior fiscal year. The budget approved by the Board of Directors shall be the basis for developing the Annual Membership Fees and Rate Schedule. A copy of the adopted budget shall be provided to all Members.

On a quarterly basis, each Member will receive an Activity Statement for its respective subsidiary accounts.

After the end of each fiscal year, the Executive Director shall submit to the Executive Committee and Board of Directors a summary of financial activity, including a comparison of budgeted expenditures to actual expenditures.

4.1.1. Preliminary Budget

The Preliminary Budget shall include all funding sources, operational and maintenance expenses, as well as planned capital costs for the subsequent year.

4.1.2. Five-Year Financial Forecast

The Five-Year Financial Forecast shall include projected revenues, operational and maintenance expenses, and capital costs for five years following the Preliminary Budget. The Five-Year Financial Forecast will be used to prepare future years' annual budgets.

4.1.3. Fund Balance Report

A Fund Balance Report shall be prepared for the RWC Operating Fund in addition to the Infrastructure Replacement and Expansion Fund. A Fund Balance Report shall provide a projection of annual fund balances through the period covered by the Five-Year Financial Forecast and shall include recommendations regarding the adequacy of the fund balance reserve.

4.1.4. Activity Statements

On a quarterly basis, each Member will receive an Activity Statement for its Infrastructure Replacement and Enhancement Subsidiary Account and, if applicable, its Special Revenue Fund Project(s) Subsidiary Account(s).

Quarterly activity statements for subsidiary accounts associated with the Infrastructure Replacement and Enhancement Fund and the RWC Special Revenue Fund will be prepared and forwarded to each Member for review. The statements will indicate dates and amounts of all payments made into the accounts as well as expenditures charged to the accounts. The statements will also indicated the average daily account balance, the interest rate applied, and the resulting interest earnings or expense added to the account balance.

4.1.5. Year-end Expenditure Reporting

Year-end Expenditure Reporting shall include an accounting of the actual cost of the operation, maintenance and replacement of the Network compared to budgeted expenditures and fees assessed to Members.

4.2. Funding

The Members shall fund the RWC through Annual Membership Fees, Special Assessments, and grants, as determined by the Board of Directors.

It will be the responsibility of each Member to take the appropriate steps in conformity with the state and local laws to ensure that it appropriates sufficient funds to cover its obligations assumed under this Agreement. Each Member shall encumber its share of the RWC's current year's planned costs no later than July of each fiscal year. Members will advance funds to Administrative Managing Member on a quarterly basis upon receipt of an invoice. Payment of all invoices is due forty-five (45) days from the invoice date. The Administrative Managing Member will transfer funds for its share of the RWC's quarterly planned costs to the RWC operating fund no later than forty-five (45) days after the invoice date.

A late payment charge will be assessed at the rate of one percent (1%) per month for all payments received late. If the Administrative Managing Member does not transfer its share of the cost to the RWC Operating Fund as provided herein, the Administrative Managing Member shall pay interest at the rate of one percent (1%) per month. Interest collected will be deposited into the RWC Operating Fund and be used to offset operating and maintenance costs.

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 terms and conditions outlined in the IGA, Section 17, Default and Cure, and Section 18, Alternative Dispute Resolution. Payments not made under protest shall be deemed to be correct. If a protest is not filed within forty-five days of the invoice date, the Member waives its right to file a protest.

If a Member withdraws from the Network, that Member shall be responsible for all unpaid fees applicable for time of the Member's Membership.

It shall be the responsibility of each Member to bill and collect from its individual users such user charges and cost recovery charges as are required in the payment of the amounts due under this Agreement.

4.2.1. Annual Membership Fee

Each Member agrees to pay an Annual Membership Fee to cover the cost of RWC Administrative Services including allocated insurance premiums, self-insurance costs, costs of claims and lawsuits, Network Operations and Maintenance Services, and Network Infrastructure Replacement and Enhancement Projects. The annual amount to be collected shall represent the Board approved operations and maintenance budget for the current fiscal year in addition to the amount approved by the Board for the subsequent year's infrastructure replacement and enhancement projects. The Annual Membership Fee shall be adjusted for any capital funding collected in previous years on behalf of capital projects included in the current fiscal year operating budget. In addition, the Annual Membership Fee shall also include the amount required to maintain the Board approved fund balance reserves in accordance with Section 4.2.1.4.1 and 4.2.1.5.1. Annual Membership Fees shall increase Members' Equity, as established under Section 4.3, only to the extent that funds are deposited in the Infrastructure Replacement and Enhancement Fund.

The cost of purchasing, maintaining and programming Subscriber Units shall be borne solely by the Member owning the Subscriber Units.

Notwithstanding the provisions of this Section 4.2.1 and Section 4.2.1.2, the Board of Directors shall have the discretion to adjust the amount a member pays as its proportionate share of the Network Operations and Maintenance Services cost if the Board of Directors finds factors or circumstances relating to the provision of operational and maintenance services are such that the formula used to determine the amount the member pays for Network Operations and Maintenance Services (i.e., an amount proportionate to its Subscriber Units in use on the Network at the time the fee is assessed) results in an unfair or inequitable assessment to that member or to the other members.

4.2.1.1. Rate Approval

The Annual Membership Fee rate shall be submitted to the Board of Directors for approval not later than one hundred twenty (120) days prior to the beginning of the fiscal year in which the proposed rates are to be in effect.

4.2.1.2. Payment Basis

The Annual Membership Fee shall be assessed and paid on a quarterly basis. Payments are due to the Administrative Managing Member in the months of July, October, January, and April of each year. The amount each Member shall pay will be proportionate to its Subscriber Units in use on the Network at the time the fee is assessed. Mid-quarter changes in Subscriber Units using the Network will not impact Members' share of costs until the beginning of the next quarter.

4.2.1.3. Interim Adjustments

If at any time during the current fiscal year, the Executive Director reasonably believes the budget used to calculate quarterly fees is grossly inaccurate, the Executive Director may present to the Executive Committee and Board of Directors a new budget. Upon approval by the Board of Directors, the new budget shall be used to recalculate the remaining quarterly fees due in that fiscal year.

If infrastructure replacement and enhancement projects are advanced or delayed, The Administrative Managing Member may propose interim changes to the quarterly Annual Membership Fee billings.

4.2.1.4. RWC Operating Fund

The portion of the Annual Membership Fee assessed and collected to cover the cost of RWC administration services, Network operations and maintenance, and to maintain the minimum RWC Operating Fund balance, shall be deposited in the RWC Operating Fund. Interest or interest expense will be applied monthly to the RWC Operating Fund based on the average daily balance during the month. The interest rate applied will be the rate earned in the Administrative Managing Member's pooled cash account. Interest earned will be used to offset operating expenses.

4.2.1.4.1. Minimum Balance

Members agree to establish and maintain an operating fund balance reserve equal to twelve and one half percent (12.5%) of yearly budgeted total operation and maintenance costs excluding capital replacement fund charges. The fund balance reserve initially will be established semiannually in the first year and maintained annually thereafter. Each Member's obligation to fund the fund balance reserve shall be proportionate to its Subscriber Units in use on the Network at the time the fee is assessed. Midyear changes in Subscriber Units will not impact a Member's share of the fund balance reserve until the beginning of the next fiscal year. The Board of Directors shall approve any increase or decrease to the fund balance reserve.

4.2.1.4.2. Year-end Settlement

After the end of each fiscal year, the Executive Director shall prepare a settlement of the RWC Operating Fund by comparing fees assessed to actual expenditures paid. If the settlement shows for any Member that actual expenditures exceeded fees assessed, the Board of Directors may authorize the Executive Director to bill the applicable Member for an amount sufficient to cover the shortage. If the settlement shows for any Member that expenditures are less than the fees assessed, the unused fees shall be used to reduce the applicable Member's next quarterly Annual Membership Fee payment.

Amounts owed by or to the Administrative Managing Member as a result of the annual year-end settlement will accrue interest based on the earnings rate in Administrative Managing Member's pooled cash account until the appropriate funds are distributed or paid. Amounts owed by or to the Administrative Managing Member as result of the year-end settlement will be distributable within forty-five (45) days of the acceptance of the annual audit report by the Board of Directors.

4.2.1.5. Infrastructure Replacement and Enhancement Fund

The portion of the Annual Membership Fee assessed and collected to cover Board approved infrastructure replacements and enhancements and to maintain the minimum Infrastructure Replacement and Enhancement Fund balance shall be deposited into the Infrastructure Replacement and Enhancement Fund. Subsidiary records for each Member will be maintained. Interest or interest expense will be applied monthly to each subsidiary account based on the average daily balance during the month. The interest rate applied will be the rate earned in the Administrative Managing Member's pooled cash account.

4.2.1.5.1. Minimum Balance

The Members agree to establish the Infrastructure Replacement and Enhancement Fund balance reserve. Each year, the Board of Directors shall establish the Minimum Balance for the Infrastructure Replacement and Enhancement Fund by September 30th, for the following fiscal year. Each Member's obligation to fund the fund balance reserve shall be proportionate to its Subscriber Units in use on the Network at the time the fee is assessed. The Board of Directors shall approve any increase or decrease to the fund balance reserve.

4.2.1.5.2. Approved Uses

The Infrastructure Replacement and Enhancement Fund shall be used only for infrastructure replacements and enhancements approved by the Board of Directors except in the event of a major failure, disaster or force majeure event that necessitates immediate action to restore the Network to operating condition. In such cases, the Executive Director is authorized to withdraw funds. Funds withdrawn under these circumstances shall be reported to the Members at the next Board of Directors meeting for after the fact approval and special assessment, if necessary.

Members agree that expenditures against the Infrastructure Replacement and Enhancement Fund shall not be authorized if they will cause the fund to be in a deficit position at any point in time.

If the Infrastructure Replacement and Enhancement Fund is negative at the end of any month, the Administrative Managing Member will immediately bill each Member for an amount sufficient to cover the shortage and to re-establish the required deposit amount. These bills will be faxed to each Member and payments for these billings must be received by the Administrative Managing Member within thirty (30) working days. In such an event, the Administrative Managing Member will re-evaluate the approved budget for the remainder of the year to determine if the quarterly billings should be adjusted.

4.2.2. Special Assessments

The Board of Directors may assess other fees on an as-needed basis to pay the costs of unplanned projects such as disaster recovery, certain extraordinary claims or lawsuits, the use of the Network by an Interoperability or Conditional Participant, or to pay the costs of special projects or system changes and/or expansions not previously included in the budget. Such changes may not benefit all Members in a reasonably proportionate manner. Fees may be assessed proportionately or individually, as approved by the Board of Directors, and need not be equal among Members. Fees collected as a special assessment shall be deposited into a special revenue fund.

4.2.2.1. RWC Special Revenue Fund

The RWC Special Revenue Fund shall only be used to pay the costs of the projects for which a Special Assessment has been imposed. Subsidiary records for each project will be maintained. Interest will be applied monthly to each project's account based on the average daily balance during the month. The interest rate applied will be the rate earned in the Administrative Managing Member pooled cash account. Interest earned will remain in the project account to finance ongoing expenses associated with the project.

4.2.2.1.1. Settlements

After the project is completed and all related debts have been paid, the Administrative Managing Member shall prepare a reconciliation of the project's subsidiary account by comparing fees assessed and paid to actual expenditures paid. If the reconciliation shows actual expenditures exceeded fees assessed and paid, the Administrative Managing Member will bill the applicable Member(s) for an amount sufficient to cover the shortage. If the reconciliation shows expenditures are less than the fees assessed and paid, the unused fees shall be either refunded or applied as a credit to the applicable Member(s) account(s). When more than one Member is funding a project, billings and refunds will be sent to each Member in accordance with the Board approved funding plan for the project.

4.2.2.2. Applicant Impact Assessment

Each entity considered for membership shall pay a Special Assessment to cover the cost of developing an Impact Assessment that will address the effect of the request on the existing infrastructure and Members. The Special Assessment shall be paid prior to commencement of the Impact Assessment study.

4.2.2.3. New Member

Each new Member to the RWC shall pay a Special Assessment equal to the full cost associated with providing services to the new Member. The amount to be paid will include the cost to provide service to the new Member's Subscriber Units, any investment in Network infrastructure necessary to increase Network capacity, and other costs deemed necessary to ensure existing Members receive the same services and benefits they received before the new Member joined the Network. The Special Assessment shall be paid in accordance with the terms and conditions established by the Board of Directors as part of the membership agreement. If the infrastructure that must be purchased for such capacity could ultimately be used to handle additional Subscriber Units beyond the amount requested by the new Member, the new Member may enter into a capacity agreement that provides for reimbursement of a portion of these costs, if and when additional Subscriber Units are brought onto the Network.

4.2.2.4. Existing Member Capacity and Coverage Upgrade

A request from an existing Member expected to impact the Network coverage, capacity and/or performance of other Members will require the existing Member to pay a Special Assessment to cover the cost of an Impact Assessment to determine the impact of the request on the existing infrastructure and Members. Requests requiring a Special Assessment shall include, but are not limited to, requests to increase the number of Subscriber Units, Talkgroups, roaming profiles, or coverage individually or cumulatively, by more than ten percent (10%). The Impact Assessment shall determine the cost and benefits of the request and assess the impact on the existing infrastructure including, but not limited to, controllers, base stations, facility capacity, traffic capacity, roaming capacity, microwave/fiber capacity, and overall coverage. The Operations Working Group shall consider such requests upon payment of the Special Assessment and forward their recommendation to the Executive Committee for review and Board of Directors for approval.

4.2.3. Grants

Acceptance and use of grant funds is at the discretion and approval of the Board of Directors. Grant funds acquired on behalf of the RWC will be used to reduce costs for the project for which the grant was applied. The application for or the award of a grant shall not relieve a Member of its obligation to pay, within forty-five (45) days of the invoice date, costs billed in accordance with this Agreement. Grant funds will be credited to each Member in proportion to the amount of funding each Member contributed towards the grant project, as grant funds are received. Grant funds credited to a Member will increase the Members' equity pursuant to Section 4.3 of this Agreement.

4.3. Members' Equity

The Members' equity shall equal the total amount invested in the Network by all Members, excluding investments made for real estate, real property, and other property defined in section 5 of this Agreement, that will continue to be owned by individual Members. A Member's proportionate share of the Members' Equity shall be based on that Member's investments

expressed as a percentage of the Members' total equity. Members' equity in the RWC will be recalculated when:

- A new member joins the RWC;
- A major enhancement or expansion is completed;
- At fiscal year-end after each Member's payments into the Infrastructure Replacement and Enhancement Fund are applied, actual expenditures are allocated against each Member's account, and interest is applied to each Member's cash balance.

If a Member brings assets to the RWC and the Board of Directors accepts the assets on behalf of the RWC, the Members' equity will increase and the Member bringing the assets into the RWC will acquire that equity.

4.4. Annual Audit

An independent audit of RWC financial records will be conducted annually. The Board of Directors shall determine the scope of work of the independent annual financial audit.

5. RWC ASSETS

Each Member shall retain any and all right, title and interest in real estate, real property and fixtures thereto, including without limitation real estate, buildings, structures, towers, and generators that the Member owns, leases or licenses and that the Member authorizes or allows the Regional Wireless Cooperative to use as part of the Network.

Each Member is responsible for and shall bear the cost of maintaining its real estate and real property, including fixtures thereto, that are made part of the Network, to the extent necessary to maintain the operational integrity and capacity necessary to operate the Network. Each Member agrees that it will make all arrangements necessary to allow the Managing Members reasonable access to that Member's real estate, buildings, structures, towers and other facilities that are part of the Network for the purposes of inspecting, operating, and maintaining the Network. Prior to exercising the right of inspection provided by this paragraph, the Managing Member shall give the Member whose property is to be inspected reasonable notice under the circumstances then existing.

Any and all real estate and real property that is purchased by and on behalf of the Regional Wireless Cooperative shall be held jointly and owned in common by the Members, with each Member's ownership interest in RWC real estate and real property proportionate to that Member's share of the investment in the property.

Any and all personal property, including equipment, hardware and software, that is owned by a Member and brought into the Network, or that is purchased by and on behalf of the RWC, shall be held jointly and owned in common by the Members with each Member's ownership interest in the RWC personal property proportionate to the amount each Member invested in the

property.

The Board of Directors shall approve the sale or disposal of any Network assets. In the event of a sale, the Members shall share in the proceeds, considerations or benefits from the sale in proportion to Members' equity in place at the time of sale.

Each Member agrees that as part of its obligations and commitments in support of the Regional Wireless Cooperative, that it will not dispose of or remove from the Network, without the approval of the Board of Directors, its real estate or real property that it has initially allowed all Members to use.

The Members of the RWC agree that any real or personal property purchased for the benefit of the RWC shall be titled and held in the name of the Administrative Managing Member, even though all financially contributing Members to the purchase shall actually own a percentage share in such real or personal property.

6. INSURANCE

6.1. Real Property

Each member is responsible to insure real property, including fixtures thereto, titled in its own name.

Each member who has leased real property, including fixtures thereto, to be used in the cooperative is responsible to insure that property according to the terms of the lease.

The administrative managing member is responsible to insure real property cooperatively purchased or leased for the benefit of the RWC as directed by the board of directors.

6.2. Personal Property

The Administrative Managing Member is responsible to insure as directed by the Board of Directors all personal property brought into the network as described in Section 5 of this document, whether the personal property is titled in an individual member or cooperatively purchased on behalf of the RWC.

6.3. Liability Insurance

Each member is responsible to insure its liability assumed under the IGA Section 4.4.

The Board of Directors shall determine appropriate insurance coverage for the RWC's liability assumed under the IGA Section 4.4, in accordance with the IGA Section 4.8.

6.4. Insurance Programs

The RWC, Board of Directors, individual members and Administrative Managing Member may use any combination of insurance, excess insurance or self-insurance to satisfy the terms

of this Section 6.

7. SERVICES

The RWC will develop policies, procedures and guidelines that govern how Members, Associates, and Conditional and Interoperability Participants obtain services, whether routine or emergency, establish Talkgroups, set priorities, determine roaming/site access, use encryption, and operate on the Network. When using the Network each Member shall abide by all policies, procedures and guidelines established by the RWC and the terms and conditions of all applicable Agreements.

7.1. Programming and Reprogramming

The Network Managing Members, or a Board of Directors authorized provider, shall program or reprogram all Subscriber Units with a valid Network key. All Subscribers Units shall only be programmed or reprogrammed with valid programming templates that have been approved by the RWC. The cost of programming or re-programming Subscriber Units is the sole responsibility of each Member and is not included in the Annual Membership Fee.

7.2. Encryption

The Managing Members shall provide key management services including generation, distribution, storage, destruction and maintenance of key materials. Individual Members may be required to update key materials in Subscriber Units as directed by the RWC. The RWC may designate other agencies, such as Federal agencies, to provide key management services in special circumstances.

7.3. Network Management

The Network Managing Members shall program, maintain, and manage the Network databases in a manner that minimizes the degradation of operational performance and the loss or corruption of data. The Network Managing Members shall follow RWC established policies and procedures applicable to Network Management.

7.4. Interoperability

The RWC shall establish procedures and practices to support interoperability among all Members, Associates and Conditional and Interoperability Participants. The RWC shall follow the National Incident Management System (NIMS) protocols for interoperable communications.

7.5. Training

Each Member shall ensure that its users are properly trained prior to any use of the Network.

8. PERFORMANCE AND OPERATION

The Network is designed and implemented in accordance with design and evaluation standards for public safety systems. During the technical analysis phase for adding new Members to the Network, the RWC shall follow the RWC design criteria and evaluation standards to protect both current and future Members. The RWC shall be responsible to maintain coverage, capacity and performance in accordance with public safety needs, requirements and standards. The RWC intends to maintain the existing Network coverage and capacity requirements; however, there are no guarantees of Network reliability and availability for new Members when operating within the existing service territory. The RWC anticipates in certain situations restrictions may have to be employed to assist with capacity control during the new Member evaluation process. The nature of the restrictions will be explored and discussed with each applicant on a case-by-case basis.

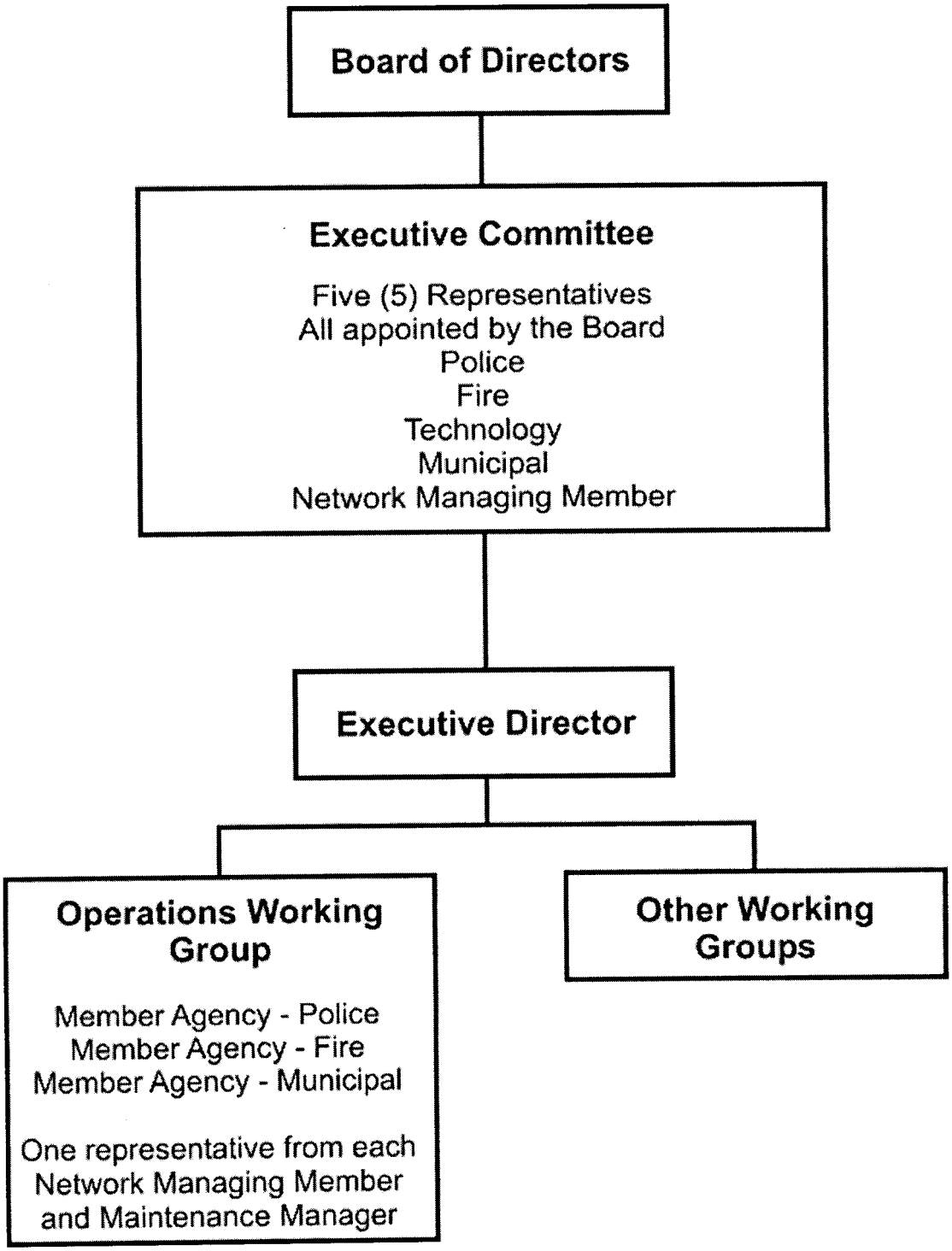
9. MAINTENANCE

9.1. Maintenance Plans Intra/Inter Agency

The Maintenance Managers and Network Managing Members shall provide Network maintenance in accordance with the policies, procedures, standards and responsibilities established by the RWC. The Maintenance Managers and Network Managing Members shall provide reasonable notice to Members of any scheduled or unscheduled service affecting a Member's use of the Network.

9.2. Responsibility for Repair of Subscriber Units

Each Network user is solely responsible for the maintenance and repair of its Subscriber Units. Only Members and vendors, certified by the RWC shall be used for the maintenance and repair of Subscriber Units. When maintaining and repairing Subscriber Units, authorized Members and vendors shall adhere to RWC policies and procedures including handling of Network keys, encryption keys, and configuration programming.

EXHIBIT B

RWC ORGANIZATION STRUCTURE