



BOARD OF SUPERVISORS AGENDA ITEM REPORT
AWARDS / CONTRACTS / GRANTS

Award Contract Grant

Requested Board Meeting Date: 11/12/2024

* = Mandatory, information must be provided

or Procurement Director Award:

***Contractor/Vendor Name/Grantor (DBA):**

Silverbell Fire Department

***Project Title/Description:**

Public Safety Service Participant

***Purpose:**

Silverbell Fire has been approved to participate in PCWIN as a Public Safety Service Participant. Silverbell Fire will have 26 radios on the system to conduct daily operations and communicate with other public safety agencies.

The Department of Emergency and Military Affairs (DEMA) policy prohibits DEMA's attorney from signing Intergovernmental Agreements (IGA) but DEMA's attorney has reviewed this IGA in accordance with A.R.S. § 11-952(D).

***Procurement Method:**

Procurement exempt. This Agreement is a non-Procurement contract and not subject to Procurement rules.

***Program Goals/Predicted Outcomes:**

To ensure interoperability between PCWIN members and supported agencies.

***Public Benefit:**

To support efforts of PCWIN, a state-of-art digital trunked radio communications system designed to provide reliable public safety grade radio communications throughout Pima County.

***Metrics Available to Measure Performance:**

Silverbell Fire will make timely payments per the Agreement

***Retroactive:**

No

TO: COB, 10-24-2024 (1)
Vers.: 2
pgs.: 72

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THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (*) fields

Contract / Award Information

Document Type: CT Department Code: WIN Contract Number (i.e., 15-123): CT2400000024
Commencement Date: 11/12/2024 Termination Date: 11/11/25 Prior Contract Number (Synergen/CMS): NA
Expense Amount \$ _____ Revenue Amount: \$ 11,544.00

*Funding Source(s) required: Silverbell Fire

Funding from General Fund? Yes No If Yes \$ _____ % _____

Contract is fully or partially funded with Federal Funds? Yes No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? Yes No
If Yes, attach Risk's approval.

Vendor is using a Social Security Number? Yes No
If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Commencement Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____

Expense Revenue Increase Decrease Amount This Amendment: \$ _____

Is there revenue included? Yes No If Yes \$ _____

*Funding Source(s) required: _____

Funding from General Fund? Yes No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards)

Award Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Commencement Date: _____ Termination Date: _____ Amendment Number: _____

Match Amount: \$ _____ Revenue Amount: \$ _____

*All Funding Source(s) required: _____

*Match funding from General Fund? Yes No If Yes \$ _____ % _____

*Match funding from other sources? Yes No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

Contact: Nicole Jennings

Department: PCWIN

Telephone: 724-9320

Department Director Signature: [Signature] Date: 10-21-24

Deputy County Administrator Signature: [Signature] Date: 10-24-24

County Administrator Signature: [Signature] Date: 10/24/24

PIMA COUNTY WIRELESS INTEGRATED NETWORK

PROJECT: PUBLIC SAFETY SERVICE PARTICIPANT

GRANTEE: SILVERBELL FIRE DEPARTMENT

CONTRACT NO.: CT2400000024

ANNUAL REVENUE: \$ 11,544

**Intergovernmental Agreement
between
Pima County and Arizona Department of Emergency and Military Affairs
on behalf of Silverbell Fire Department
to add
Silverbell Fire Department as a Public Safety Service Participant**

This Intergovernmental Agreement (“**IGA**”) is entered into by and between Pima County, a body politic and corporate of the State of Arizona (“**County**”) and the Arizona Department of Emergency and Military Affairs/Silverbell Fire Department (“**Silverbell Fire**”), pursuant to A.R.S. § 11-952 (individually, “**Party**” and together, the “**Parties**”).

1. Background.

- 1.1. County and Silverbell Fire may contract for services and enter into agreements with one another for joint or cooperative action pursuant to A.R.S. § 11-951, et seq.
- 1.2. County and numerous other parties entered into an Intergovernmental Agreement to Operate, Maintain, Sustain, Improve, and Finance the Pima County Wireless Integrated Network (SC2400000053 FKA CT-WIN-23*387 and CT-OEM-13*400), which became effective November 13, 2012 (copy attached as **Exhibit 1**). That agreement created the Pima County Wireless Integrated Network Cooperative (the “**Cooperative**”) and included (as **Exhibit A** incorporated therein) the Pima County Wireless Integrated Network Cooperative Governance Document (the “**Governance Document**”).
- 1.3. County is the Administrative Managing Member of the Cooperative and has contracting authority for the Cooperative. County is entering into this Agreement in its capacity as the Administrative Managing Member and with the authorization of the Pima County Wireless Integrated Network (“**PCWIN**”) Board of Directors.
- 1.4. Joining the Cooperative as a Public Safety Service Participant will allow the Silverbell Fire to use the PCWIN Network to have radio interoperability with other agencies.
- 1.5. This IGA is authorized by Section 3.1.6 of the Governance Document, which allowed providers of Public Safety Service as defined in the Governance Document to become a Public Safety Service Participant in the Cooperative.

2. **Definitions.** This IGA includes certain terms that are defined in the Governance Document. Those terms have the same meaning in this IGA as they are defined in the Governance Document.
3. **Purpose.** County and Silverbell Fire want to allow Silverbell Fire to use the PCWIN Network as a Public Safety Service Participant under Section 3.1.6 of the Governance Document as follows:
 - 3.1. Silverbell Fire is authorized by the Cooperative's Board of Directors to use the Radio System for purposes of providing public safety service. As a Public Safety Service Participant, Silverbell Fire's law enforcement employees may use the PCWIN Network to support PCWIN Members and Silverbell Fire with Public Safety Service. When using the PCWIN Network, Silverbell Fire must abide by all policies, procedures and guidelines established by the Cooperative as a condition for using the PCWIN Network.
 - 3.2. PCWIN will be Silverbell Fire's primary means of communication. Silverbell Fire plans to use 16 portable radios, and 10 mobile radios (collectively, "Subscriber Units") on the PCWIN Network.
 - 3.3. Silverbell Fire has no voting rights or representation on the PCWIN Board of Directors or Executive Committee but may appoint one representative to the Operations Working Group.
 - 3.4. County, through PCWIN, will provide talkgroup programming for Silverbell Fire to include talkgroup recording and over the air programming.
4. **Fee and Costs.** Silverbell Fire will pay the annual membership fees in **Exhibit 2** to this IGA. County will invoice Silverbell Fire quarterly in advance for membership fees through County's Finance Department, Revenue Management Division. Silverbell Fire must pay County within 30 days of receipt of County's invoice. If Silverbell Fire does not pay County within 30 days, County will send a written demand for payment to Silverbell Fire and Silverbell Fire will have 10 days to pay the full amount due. If Silverbell Fire fails to pay the amount due before the deadline, County may terminate this IGA immediately upon written notice.
5. **Term and Termination.**
 - 5.1. This IGA will be effective on the date it is fully executed by both Parties and will continue for a period of one year unless it is, prior to the expiration of such period, extended or terminated by agreement of the Parties. This IGA will automatically renew for terms of one year upon mutual agreement by both parties unless otherwise terminated as allowed by this IGA. Notwithstanding the foregoing, this IGA automatically terminates upon dissolution of the Cooperative.
 - 5.2. The Parties may terminate this IGA at any time during the term of the IGA or any extended term by first providing not less than 90 days prior written notice to the other Party.
6. **Disposal of Property.** Upon the termination of this IGA, all property involved will revert back to its owner. Termination will not relieve any Party from liabilities or costs already incurred under this IGA, nor affect any ownership of property pursuant to this IGA.

7. **Disclaimer of Warranties.** Silverbell Fire acknowledges and agrees that neither County nor any other Cooperative member warrants the reliability or performance of the PCWIN Network. County disclaims all warranties whether written, oral, implied or statutory, applicable or relating to the equipment, supplies, maintenance of the equipment, or other items provided under the agreement by County or any other Cooperative members, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose and Silverbell Fire acknowledges that no such warranties have been made by County or any other Cooperative member. Silverbell Fire also waives any rights and remedies to make a claim against County or any Cooperative member including, without limitation, any general, special, incidental or consequential damages, for any reason whatsoever, based on (1) Silverbell Fire's use of the PCWIN Network, or (2) County's or any other Cooperative member's operation and maintenance of the PCWIN Network. Silverbell Fire agrees that the PCWIN Network and Silverbell Fire's use of the PCWIN Network is provided on an "AS-IS" "WHERE IS" basis with all faults.
8. **Indemnification.** Each Party (as Indemnitor) agrees to indemnify, defend and hold harmless the other Party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.
9. **Insurance.** Each Party warrants that it is self-insured or otherwise maintains adequate insurance to fully cover its liability under this IGA.
10. **Compliance with Laws.** The Parties will comply with all federal, state and local laws, rules, regulations, standards and Executive Orders. The laws and regulations of the State of Arizona will govern the rights of the Parties, the performance of this IGA and any disputes. Any action relating to this IGA will be brought in a court in Pima County. The Parties shall comply with A.R.S. § 23-214 and shall ensure that any contractors that they may employ in conjunction with this IGA shall comply with this statute.
11. **Non-Discrimination.** The Parties will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this IGA, including flow-down of all provisions and requirements to any contractors. During the term of this IGA, the Parties will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
12. **ADA.** The Parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§ 12101–12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
13. **Conflict of Interest.** This IGA is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.
14. **Non-Appropriation.** Notwithstanding any other provision in this IGA, this IGA may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this IGA. In the event of such cancellation, the Parties will have no further obligations under this IGA other than for payment for services rendered prior to cancellation.

15. **Worker's Compensation.** Each Party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each Party is solely responsible for the payment of Worker's Compensation benefits for its employees.
16. **No Joint Venture.** It is not intended by this IGA to, and nothing contained in this IGA will be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between a Party and the employees of the other Party. Neither Party will be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.
17. **Third Party Beneficiaries.** All Cooperative members and other participants in the Cooperative are intended third party beneficiaries of this IGA. Except as otherwise provided by the first sentence of this Section 17, this IGA 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 IGA. The Parties do not intend to create rights in or remedies to any third party as a beneficiary of this IGA or of any duty, obligation, or undertaking established under this IGA.
18. **Notice.** Any notice required or permitted to be given under this IGA must be in writing and served by delivery or by certified mail upon the other Party as follows (or at such other address as may be identified by a Party in writing to the other Party):
- 19.

County:

PCWIN Executive Director
 3434 E. 22nd Street
 Tucson, AZ 85713

Silverbell Fire:

Western Army Aviation Training Site
 22440 E. Pinal Airpark Road
 Building L4320
 Silverbell Army Heliport Station 360
 Marana, AZ 85653

20. **Amendment.** This IGA may only be modified, amended, altered or changed by written agreement signed by the Parties.
21. **Severability.** If any provision of this IGA, or any application of a provision to the Parties or any person or circumstance, is found by a court to be invalid, that invalidity will not affect other provisions or applications of this IGA that can be given effect without the invalid provision or application.
22. **Legal Authority.** Neither Party warrants to the other its legal authority to enter into this IGA. If a court, at the request of a third person, should declare that either Party lacks authority to enter into this IGA, or any part of it, then the IGA, or parts of it affected by such order, will be null and void, and no recovery may be had by either Party against the other for lack of performance or otherwise.

23. **Entire Agreement.** The Parties' entire agreement pertaining to the subject matter addressed herein consists of (a) This document and all exhibits attached to it; (b) Another Agreement between the Parties titled "Professional Services Agreement between Pima County and Arizona Department of Emergency and Military Affairs on behalf of Silverbell Fire Department for PCWIN Subscriber Services," a copy of which is attached as **Exhibit 3**; and (c) The Intergovernmental Agreement to Operate, Maintain, Sustain, Improve, and Finance the Pima County Wireless Integrated Network (Contract No. SC2400000053), and all prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this agreement between the Parties.
24. **Effective Date.** This IGA will become effective when all Parties have signed it. The effective date of the IGA will be the date this IGA is signed by the last Party (as indicated by the date associated with that Party's signature).

SIGNATURE PAGE TO FOLLOW

PIMA COUNTY

**Arizona Department of Emergency and
Military Affairs on behalf of Silverbell Fire**



Adelita S. Grijalva, Chair
Board of Supervisors

[Signature]

Date

Major General Kerry Muehlenbeck,
Adjutant General of Arizona

ATTEST

Clerk of the Board

15 October 2024
Date

ATTEST

[Signature & Title]

Intergovernmental Agreement Determination

The foregoing Intergovernmental Agreement between Pima County and the Silverbell Fire has been reviewed by the undersigned, who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the Party he or she represents.

PIMA COUNTY:



Deputy County Attorney

EXHIBIT 1: PCWIN Master IGA

CONTRACT
NO. <i>CT. DEM. 130000 0000 0000 4/00</i>
AMENDMENT NO. _____
<small>This number must appear on all invoices, correspondence and documents pertaining to this contract.</small>

INTERGOVERNMENTAL AGREEMENT TO
OPERATE, MAINTAIN, SUSTAIN, IMPROVE
AND FINANCE THE PIMA COUNTY WIRELESS
INTEGRATED NETWORK

INTERGOVERNMENTAL AGREEMENT TO
OPERATE, MAINTAIN, SUSTAIN, IMPROVE AND FINANCE
THE PIMA COUNTY WIRELESS INTEGRATED NETWORK

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INTERGOVERNMENTAL AGREEMENT TO
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THE PIMA COUNTY WIRELESS INTEGRATED NETWORK

1.

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 Pima County Wireless Integrated Network Cooperative ("Cooperative"), as detailed in Exhibit A, formed for the purpose of maintaining the Pima County Wireless Integrated Network ("Network").

2. Recitals

- 2.1. Pima County is constructing the Pima County Wireless Integrated Network ("PCWIN") regional public safety communications system as authorized by Pima County voters at the May 18, 2004 Special Bond Election, and pursuant to Pima County Ordinance No. 2004-18 as subsequently amended.
- 2.2. The PCWIN bond funded, capital improvement project, is providing the fixed infrastructure; and, subject to available funding, a majority of the subscriber units required by the public entities defined in Pima County Ordinance 2004-18 that may become Parties to this Agreement.
- 2.3. The PCWIN communications system will provide opportunity for Public Safety Service providers to migrate their communications services to a regional shared system governed by a Cooperative Board of Directors.
- 2.4. The Parties to this Agreement will share the benefits and cost of operating, maintaining, sustaining, improving and financing PCWIN as approved by the Board of Directors.
- 2.5. The PCWIN will provide public safety communications interoperability for improved public safety service coordination, including the support for automatic aid and mutual aid between agencies.
- 2.6. This Agreement establishes the Cooperative governance structure and mechanisms for funding the operation, maintenance, sustainment, improvements and financing of the Network.

NOW, THEREFORE, the Parties, pursuant to the above, and in consideration of the matters and things hereinafter set forth, do mutually agree as follows:

3. Agreement

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

- 3.1.1. Using their best efforts, through cooperation and sharing of common resources, for the mutual benefit of all Parties to operate, maintain, sustain, improve and finance PCWIN.
-

INTERGOVERNMENTAL AGREEMENT TO
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- 3.1.2. Providing regional communications operability and interoperability.
 - 3.1.3. Providing regional communications cost effectively and using economies of scale.
 - 3.1.4. Providing communications interoperability with other jurisdictions that are not a party to this Agreement, for the benefit of all Parties.
- 3.2. 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, and if the University of Arizona Board of Regents, A.R.S. § 15-1625.
- 3.3. The Parties agree to form the Cooperative, an unincorporated association of the Parties, to jointly and cooperatively exercise their powers to achieve the purposes specified in paragraph 3.
- 3.4. The rules and policies governing the regulation and management of the 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.
- 3.5. 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 Cooperative without first agreeing to be as bound by Exhibit A as are the initial Parties.

4. Term and Duration of Agreement; Dissolution

- 4.1. 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, and determination by the Party's attorney that the Agreement is within the powers and authority of the Party. 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 December 31, 2022; thereafter, the Agreement will automatically renew for terms of ten (10) years. Notwithstanding the foregoing, this Agreement shall automatically terminate upon dissolution of the Cooperative.
- 4.2. The Parties do not anticipate that the Cooperative will be dissolved until it is no longer desirable or feasible for the Cooperative to operate the Radio System, or Radio System

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operations are transferred to another appropriate entity as determined by the Cooperative.

- 4.3. If the Parties dissolve the Cooperative other than by transferring Radio System operations to a governmental or non-profit entity, 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. 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 Cooperative. Radio frequencies shall be dealt with in accordance with FCC licensing regulations and in accordance with the terms and conditions of any separate agreements between the Members that result in the contribution of frequencies to the Radio System.

5. Manner of Financing, Indemnity and Insurance

- 5.1. The cost of operating, maintaining, sustaining, improving and financing the Network shall be paid in the manner specified in Exhibit A. An infrastructure replacement and enhancement fund and an annual operating and maintenance budget shall be established and maintained as provided in Exhibit A. The costs paid by the Parties for operating, maintaining, sustaining, improving and financing the Network, less amounts, including grants and gifts, received from federal, state, regional or other funding sources shall be approved annually by the Cooperative Board of Directors.
- 5.2. Each Party agrees to timely pay its share of the cost of operating, maintaining, sustaining, improving, and financing the Network as specified in Exhibit A. Each Party shall render its amounts payable to the Cooperative no later than forty-five (45) days from the invoice date. The 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.
- 5.3. 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.

Each Party understands and acknowledges that claims and lawsuits may be filed for damages resulting from acts or omissions in connection with the operating, maintaining, sustaining, improving and financing, of the Network. Accordingly, to the extent permitted by law, each Party (as Indemnitor) agrees to indemnify, defend and hold

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harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

- 5.4. Insurance - Each Party shall obtain and maintain at its own expense, during the entire term of this Contract the following type(s) and amounts of insurance:
- a) Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage.
 - b) Commercial or Business automobile liability coverage for owned, non-owned and hired vehicles used in the performance of this Contract with limits in the amount of \$1,000,000.00 combined single limit or \$1,000,000.00 Bodily Injury, \$1,000,000.00 Property Damage.
 - c) If this Contract involves professional services, professional liability insurance in the amount of \$1,000,000.00.
 - d) If required by law, workers' compensation coverage including employees' liability coverage.

Parties to this agreement shall provide thirty (30) days written notice to all parties to this IGA of cancellation, non-renewal or material change of coverage.

The above requirement may be alternatively met through self insurance pursuant to A.R.S. § 11-261, § 11-981 (or if a school district, § 15-382) and § 41-621, or participation in an insurance risk pool under A.R.S. § 11.952.01 (if a school district, § 15-382), at no less than the minimal coverage levels set forth in this article. Parties to this agreement shall provide thirty (30) days written notice to all other parties of cancellation, non-renewal or material change of coverage.

- 5.5. The Cooperative, with the approval of its Board of Directors, may apply for such federal, state or other grants as are made available for operating, maintaining, sustaining, improving, and financing of the Network. The Administrative Managing Member or a Network Managing Member (by and through its authorized signatory) may submit the grant application on behalf of the Cooperative in accordance with applicable laws, rules, regulations and procedures. A grant agreement, approved by the Board of Directors, and entered into on behalf of the Cooperative 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

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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 Cooperative as provided in this Agreement. The 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.

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

6. Obligations as Members

6.1. Each Party to this Agreement is a Member of the Cooperative and shall comply with and be subject to the obligations of Members as set forth in Exhibit A, including the obligation to operate, maintain, sustain, improve and finance the Network. This Agreement shall not relieve any Party of any obligation or responsibility imposed upon it by law.

7. Voluntary Termination or Withdrawal as Members

Any Party may voluntarily terminate its participation in the Cooperative by providing twenty-four (24) months' prior written notice to the other Parties. The 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, and personal property as defined by the Agreement and as allowable by State and Federal law and/or regulation. Members voluntarily terminating their participation in the Cooperative must comply with the following:

7.1. Transfer or relinquish to the Cooperative any unexpended infrastructure replacement and enhancement funds, and operating and maintenance funds.

7.2. Pay all fees and charges owed to the Cooperative through the effective date of termination.

7.3. Provide the Cooperative with twenty four (24) months' notice before any withdrawal of Equipment, communication services, and Facilities, subject to Subsection 7.6. below.

7.4. Pay for all costs to affect the withdrawal of the Member including costs to reconfigure the Network for the remaining Members.

7.5. Allow continued use of frequencies (subject to Section 4.3 above) and Equipment required for the incremental capacity necessary for use by other Members, including for 'roaming'.

7.6. Allow the Cooperative continued use of Member's Equipment, communication services, and Facilities, or alternatively, pay for securing conforming Equipment, communication

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services, and Facilities for continued use of the Cooperative, without service interruption, for the remaining effective period of this Agreement.

- 7.7. Reimburse Pima County for the depreciated value of any Subscriber Units originally purchased by Pima County and transferred to the Member.

8. Failure to Pay Financial Obligation

- 8.1. If a Party is relieved from payment of its financial obligation to the Cooperative as a matter of law, then the Cooperative may suspend the Party's right to vote and participate in the affairs of the 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 Cooperative shall suspend the Party's right to vote and participate in the affairs of the 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 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

- 10.1. The 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 Cooperative.
- 10.2. The Cooperative and each Party respectively shall make its financial records regarding the operation, maintenance, sustainment, improvement, and financing of the Network available to any requesting official or agent of the Cooperative or Party. Such request for inspection shall not be made more frequently than once a month.
- 10.3. 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, inventory 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.

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10.4. Cooperative and Members may choose, from time to time, in connection with work contemplated under this Agreement, to disclose confidential information other than Network information defined above to each other (Confidential Information). All such disclosures must be in writing and marked as Confidential Information. The Parties will use reasonable efforts to prevent the disclosure to unauthorized third parties of any Confidential Information of the other Party and will use such information only for the purposes of this Agreement, and for three (3) years after the termination of this Agreement; provided that the receiving Party's obligations hereunder shall not apply to information that:

- a) is already in the receiving Party's possession at the time of disclosure; or,
- b) is or later becomes part of the public domain through no fault of the receiving Party; or,
- c) is received from a third party with no duty of confidentiality to the disclosing party; or,
- d) was developed independently by the receiving party prior to disclosure; or,
- e) is required to be disclosed by law or regulation.

Any information that is transmitted orally or visually, in order to be protected hereunder, shall be identified as such by the disclosing party at the time of disclosure, and identified in writing to the receiving party, as Confidential Information, within thirty (30) days after such oral or visual disclosure.

10.5. Recorded Radio & Telephony Communications - In the event radio or telephony recordings made and retained by the Cooperative are requested for public release pursuant to A.R.S. § 39-101 et seq., the Party receiving the request ("Receiving Party") shall release records ten (10) business days after the date of notice to the Originating Party of the request for release, unless the Originating Party has, within the ten day period, released the requested record or taken action to preclude its release by securing a protective order, injunctive relief or other appropriate order from a court of competent jurisdiction, enjoining the release of the records. For the purposes of this paragraph, the day of the request for release shall not be counted in the time calculation. The Originating Party shall be notified of any request for such release on the same day of the request for public release or as soon thereafter as practicable.

The Receiving Party shall not, under any circumstances, be responsible for securing a protective order or other relief enjoining the release of records, nor shall the Receiving Party be financially responsible in any manner for any costs associated with securing such an order.

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For the purpose of this paragraph, "Originating Party" shall mean the Party that creates the record; "Receiving Party" shall mean any Party that did not create the record, but possesses the record, and has received a request to release the record.

All radio and telephony recordings shall be maintained consistent with Board of Director's policies and consistent with Arizona law.

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 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 21.3 herein, specific performance may be sought by way of special action filed in superior court seeking an injunction ordering the Party to perform its obligations under this Agreement. The Parties agree not to raise as a defense the position that there is an "adequate remedy at law." The Parties hereby stipulate and consent to the jurisdiction of the superior court in any such special action.

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14. Federal Immigration Compliance

A.R.S. § 41-4401 prohibits government entities from entering into an agreement with any other government entity contractor or subcontractor who fails, or whose subcontractors fail, to comply with A.R.S. § 23-214(A). Therefore, each Party agrees that:

- 14.1. To the extent applicable, Party and each subcontractor it uses warrants its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with § 23-214, subsection A.
- 14.2. A breach of a warranty under paragraph 1 shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.
- 14.3. Each Party retains the legal right to inspect the papers of the Party or subcontractor employee(s) who work(s) on this Agreement to ensure that Party or subcontractor is complying with the warranty under paragraph 1.

15. Scrutinized Business Operations

Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, each Party certifies that it does not have a scrutinized business operation, as defined in A.R.S. §§ 35-391 and 35-393, in either Sudan or Iran.

16. Non-Discrimination

The parties agree to comply with Executive Order 75-5 as amended by Executive Order 2009-09 and to comply with all applicable state and federal laws, rules and regulations regarding equal opportunity, nondiscrimination and affirmative action.

17. Amendment

- 17.1. This Agreement may be amended only by a written document executed by a duly authorized representative of each of the Parties.
- 17.2. This Agreement, including Exhibit A, may be amended by one of the following two procedures:
 - 17.2.1. Cooperative-Legislative Procedure. A proposed amendment to this Agreement, including Exhibit A, shall be submitted for approval to the 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.

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17.2.2. 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.

17.3. 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 Cooperative.

18. Existing and Future Agreements

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

18.2. The Parties agree that they will not enter into subcontracts for the use of the Radio System 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.

18.3. 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.

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

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

18.4.2. 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 Cooperative to use as part of the Network, provided the separate agreements are consistent with this Agreement and compatible with the Cooperative's use of the property for the Network.

18.4.3. To supersede prior existing agreements concerning Facilities, that the Party owns, leases, or licenses and that the Party authorizes and allows the Cooperative to use as part of the Network, except to the extent described in Section 18.3 above.

18.5. 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

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Agreement.

19. Notices

- 19.1. 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.
- 19.2. 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.
- 19.3. 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.

20. Default And Cure

- 20.1. 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. The Party disputing the asserted default shall have the right to submit the dispute to the Cooperative's Board of Directors for a recommendation on a non-binding resolution under paragraph 21.
- 20.2. Notwithstanding the provisions of paragraph 20.1, 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 21. 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.

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20.3. If a party fails to cure a default within the time frames specified in 20.1, 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 Cooperative.

21. Alternative Dispute Resolution

- 21.1. If any dispute, complaint or controversy, including a protest made pursuant to paragraph 20.1 or 20.2, ("dispute") arises between or among the Parties under this Agreement, the dispute shall be brought to Cooperative's Board of Directors for non-binding dispute resolution in accordance with the internal dispute resolution process established by the Board of Directors. If a Party disagrees with the Board of Director's determination, the Party may pursue the remedies otherwise provided for in this Agreement.
- 21.2. 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.
- 21.3. This Agreement shall not be construed or interpreted to prohibit a Party from seeking injunctive relief for the preservation of property.
- 21.4. In the event a dispute cannot be resolved through the procedures set forth above, the Parties shall submit any controversy or claim arising out of or relating to this contract or breach of this contract to mandatory mediation before a single mediator. The Parties shall participate in mediation in good faith to resolve any dispute. Any mediation shall be held in Tucson, Arizona. Should the Parties fail to agree on a mediator within 10 days of a demand for mediation, the then-presiding civil judge of the Superior Court in Pima County, Arizona shall appoint the mediator, or one will otherwise be appointed pursuant to Board of Director's policy. If mediation is unsuccessful in resolving any dispute within ninety (90) days after demand for mediation, either Party may seek judicial remedy after ninety (90) day mandatory mediation period has elapsed, provided that such agreement to mediate shall not be construed as a waiver of the sovereign immunity of any Party.

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22. 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.

23. Performance and Uncontrollable Events

23.1. A Party shall not be considered 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.

23.2. 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.

24. 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 of Directors.

25. Entire Agreement

This Agreement, including Exhibit A, contains the entire agreement and understanding among the Parties regarding the formation, governance and operation of the Cooperative, and supersedes and replaces all related prior negotiations or agreements 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. Any amendment or modification of this Agreement shall be in writing. For only those members who are covered or hybrid entities ("Covered Members") under the Health Insurance Portability and Accountability Act ("HIPAA"), and only in the event Protected Health Information ("PHI") will be recorded onto Pima County server(s), a Business Associate Agreement or Agreements ("BAA") shall be executed and attached hereto as Exhibit B to this Agreement. Notwithstanding any provision to

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the contrary in this Agreement or Exhibit A, the terms and conditions of a BAA are solely between the signing Covered Member and Pima County.

26. 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 thereof shall be instituted only in the courts of Pima County, Arizona.

27. 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 Radio System. 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 Cooperative as provided in section 8, entitled Failure To Pay Financial Obligation.

28. 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.

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29. Counterparts

This Agreement, which includes Exhibit A, "Pima County Wireless Integrated Network 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.

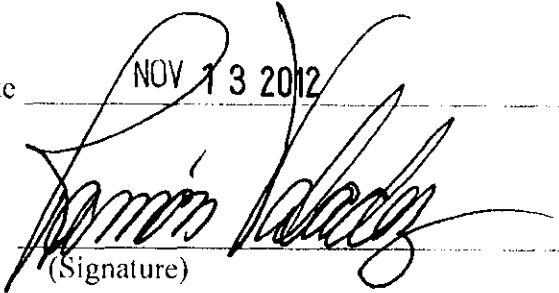
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers.

For Pima County
Entity Name

Date

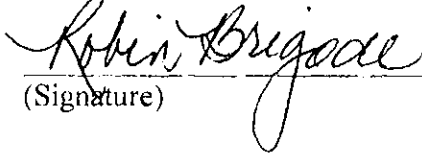
NOV 13 2012

By


(Signature)

Ramón Valadez, Chairman
Printed Name and Title

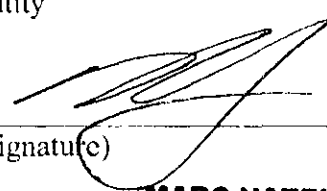
ATTEST:


(Signature)

Robin Brigode, Clerk of the Board
Printed Name and Title

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

Pima County
Entity


(Signature)

MARC NATELSKY
Printed Name and Title

Deputy County Attorney

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29. Counterparts

This Agreement, which includes Exhibit A, "Pima County Wireless Integrated Network 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: **DREXEL HEIGHTS FIRE DISTRICT**

October 19, 2012

Date _____

By *James L. Bertrand*
(Signature)

James L. Bertrand, Board Chair

Printed Name and Title

ATTEST:

Cheryl Cecil
(Signature)

Cheryl Cecil, Clerk of the Board

Printed Name and Title

APPROVED AS TO FORM and within the powers and authority granted under the laws of Arizona to the **Drexel Heights Fire District**

[Signature]
(Signature)

Thomas A. Benavidez, District Attorney

Printed Name and Title

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Printed Name and Title

EXHIBIT A – GOVERNANCE DOCUMENT to
Exhibit A to Resolution No. 21961

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1. DEFINITIONS

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

Term	Definition
Administrative Managing Member	A Member responsible for the administration and financial management of the Cooperative.
Alternate Representative	A person designated by a Member to serve as a substitute for a Member's Representative and to exercise the authority specified in this Agreement.
Annual Membership Fee	Fee paid by all Members, and other Participants as determined by the Board of Directors, to cover the cost of Cooperative administrative services, Network infrastructure operations and maintenance services, and network infrastructure replacement and enhancement projects.
Associate Participant	A non-member agency or organization that is authorized by the Board of Directors to use the Radio System to support an existing Member(s) public safety mission.
Board of Directors	The ruling body of the Cooperative that is comprised of one representative from each Member.
Board of Directors Representative	The person designated by a Member to act on behalf of the Member on all matters concerning the Cooperative, and to exercise the vote of the Member.
Conditional Participant	A non-member agency or organization authorized by the Board of Directors to temporarily use the Radio System for special preplanned events, tactical situations or emergency circumstances.
Cooperative	The unincorporated association that was formed by the Parties to use their best efforts, through cooperation and sharing of common resources, for the mutual benefit of all Parties to operate, maintain, sustain, improve, and finance a regional radio communications network.

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Cooperative Administrative Services	Services provided to the Cooperative by an 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.
Emergency Medical Service Participant	A non-member Emergency Medical Services Provider that is authorized by the Board of Directors to use the Radio System for purposes of providing emergency medical services.
Emergency Medical Service Provider	Basic or advanced life support ambulance service providers possessing a Certificate of Necessity as defined by ARS 36-2233, Indian community basic or advanced life support ambulance service provider, or hospitals providing emergency room services.
Entity	Any city, town, county, state, federal, Indian community, fire district or other separately constituted public entity that provides Public Safety services. A municipal, county or state agency, department, or division does not constitute a separate entity for Membership purposes.
Equipment	Communications hardware and any other personal property assets utilized to support the Radio System under this Agreement, or utilized pursuant to any other Agreement between parties to this Agreement.
Executive Committee	The committee responsible for evaluating all Cooperative proposals and recommendations prior to submission to the Board of Directors, and performing other duties delegated by the Board.
Executive Director	The chief administrative officer responsible for coordination of Cooperative and Network activities.
Facilities	Towers, shelters, communications centers, generators, AC/DC power, and other real property assets utilized to support the Radio System pursuant to those certain leases, licenses, permits, or other authorizations for the use of space entered into by parties to this Agreement.

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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	Status of a Member who attends at least one Board of Directors meeting per twelve (12) month period, is current in all fees owed to the Cooperative, and whose vote is not suspended.
Impact Assessment	The evaluation method used to identify the Network modifications and capital investment needed to add a new Member or Participant, or change how an existing Member or Participant 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	Wireless communications interoperability is the ability of emergency response officials to share information via voice and data signals on demand, in real time, when needed, and as authorized.
Interoperability Participant	A non-Member Public Safety Services agency authorized by the Board of Directors to intermittently use the Radio System for mutual aid and/or interoperability purposes.
Maintenance Provider	A Member or vendor responsible for providing maintenance for some portion of the Network as approved by the Board of Directors.
Member	Any entity that executes and becomes a party to the Intergovernmental Agreement to operate, maintain, sustain, improve, and finance the Network.
Network	The Radio System, Radio Consoles, Transport Network, Equipment, and Facilities that comprise the Pima County Wireless Integrated Network as defined by the Board of Directors.

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Network Infrastructure Replacement and Enhancement Projects	Projects approved by the Board of Directors to replace, expand, or enhance the Network funded through the Annual Membership Fee.
Network Managing Member	Any Member who is responsible for the day-to-day operation of the Radio System and coordination of Network Maintenance Services.
Network Maintenance Services	Services provided to the Cooperative by a Maintenance Provider to ensure physical operation of all or some portion of the Network.
Network Operations Services	Services provided to the Cooperative by a Network Managing Member to ensure optimal operation of the Radio System through coordination with the Technical Working Group and Maintenance Providers.
Numerical Vote	A vote by Members of the Board of Directors consisting of one vote per Member.
Operations Working Group	A group of Member and Participant representatives assembled by the Executive Director to address non-technical operational issues.
Parties	All Members collectively.
Party	Any Member individually.
Public Safety Service	All law enforcement, fire, emergency management, and disaster preparedness services.
Public Safety Service Participant	A non-member provider of Public Safety Service that is authorized by the Board of Directors to use the Radio System for purposes of providing public safety service.
Public Service	All public works, transportation, and other non-public safety service departments of a Member.
Radio Consoles	IP Dispatch Console, console electronics, software, paired control station radios and antennas.

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Radio System	The Public Safety Communications System which operates on the Network and used by Members.
Special Assessment	Fee assessed by the Board of Directors to pay the cost of unplanned projects such as disaster recovery, the use of the Radio System by an Interoperability or Conditional Participant, or Network changes or expansions to support new Membership or those not previously included in the budget. Special Assessments may be charged proportionately or individually and need not be equal among Members, as may be decided by the Board of Directors.
Subscriber Unit	A voice or data unit activated for use on the Radio System (e.g., operating portable, mobile, or control station). Subscriber Unit shall include a cache radio and a spare radio that has been assigned a valid system ID and activated for use. Subscriber Units do not include Radio Consoles.
Subscriber Units	The total number of Subscriber Units activated for use on the Radio System.
Talkgroup	A defined organizational grouping of radio users who need to communicate with one another.
Technical Working Group	A group of Member representatives assembled by the Executive Director to address technical issues.
Transport Network	The backhaul communications system which supports the voice and data communications requirements of the Radio System. The Transport Network is inclusive of microwave, fiber, and telecommunications circuits shared by Member jurisdictions or other providers.
Weighted Vote	A vote by Members of the Board of Directors based on a member's pro rata share of total Subscriber Units as more fully described in Section 3.2.1.3.2.

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2. MANAGING MEMBERS

Pima County ("County") shall serve as the Network Managing Member responsible for the day-to-day operations and maintenance of the Radio System. The County and the City of Tucson ("Tucson") shall serve as Maintenance Providers to maintain Network components as assigned by the Board of Directors. The County shall also serve as the Administrative Managing Member responsible for the day-to-day management of the Cooperative organization and finances. The Cooperative may change and/or designate additional Maintenance Providers as appropriate. The Cooperative 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. Management of Network Infrastructure Replacement and Enhancement Projects and resulting additional infrastructure 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. Coordinate and manage Subscriber Unit identifications and priorities.
- 2.1.2. Coordinate and manage Talkgroup identifications and priorities.
- 2.1.3. Collect and report statistical data of Radio System utilization.
- 2.1.4. Publish Network service level performance reports
- 2.1.5. Maintain, optimize, and backup Radio System databases.
- 2.1.6. Coordinate operations and maintenance of the Network components and any necessary inspections.
- 2.1.7. Identify, track, and coordinate resolution of Network problems.
- 2.1.8. Establish and maintain a disaster recovery plan.
- 2.1.9. Track and coordinate frequency management functions for frequencies licensed by the FCC for use in the Radio System.
- 2.1.10. Implement policies and procedures as approved by the Board of Directors.

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- 2.1.11. Provide and/or coordinate as necessary the support staff that performs Network Operations Services.
- 2.1.12. Inform the Executive Committee, Technical and Operations Working Groups of Network issues.
- 2.1.13. Perform all other duties as assigned by the Board of Directors.

2.2. Administrative Managing Member

The Administrative Managing Member 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 Cooperative.
- 2.2.5. Contract with other Entities as required to carry out the purposes of the Cooperative.
- 2.2.6. Serve as the contracting authority for the Cooperative.
- 2.2.7. Apply for and, if awarded, accept grants and gifts on behalf of the Cooperative.
- 2.2.8. Maintain inventory of network components and subscriber units on behalf of the Cooperative.
- 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 Provider

A Maintenance Provider shall have the following duties:

- 2.3.1. Maintain that portion of the Network assigned by the Cooperative.
 - 2.3.2. Maintain subscriber units as mutually agreed by the approved maintenance provider and the owner of the subscriber unit.
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- 2.3.3. Comply with all policies and procedures established by the Cooperative.
- 2.3.4. Provide reports as required by the Board of Directors.
- 2.3.5. Support the Administrative Managing Member and Network Managing Member(s) with information required to develop and manage budgets, inventory and maintenance history.

3. COOPERATIVE STRUCTURE

The Cooperative structure to operate, maintain, sustain, improve and finance 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 Cooperative Membership shall be composed of the initial Members and any other Entity that is admitted in accordance with Section 3.1.7 of this Agreement. A municipal, county or state agency, department, or division shall be represented by its corresponding city, town, county, state, Indian nation or tribe, or separate entity. Each city, town, county, state, Indian nation, fire district, or separate entity shall constitute one member of the Cooperative.

3.1.2. Associate Participants

An agency or organization may become an Associate Participant if the agency or organization: (1) is sponsored by a Member and is authorized by the Board of Directors to use the Radio System to support Public Safety Services; and (2) is compliant with the conditions as set forth by the Board of Directors. Associate Participants have no Cooperative voting rights or representation on the Board of Directors, Executive Committee, or the Technical Working Group. Associate Participants may have one representative on the Operations Working Group. Unless directed otherwise by the Board of Directors, fees or costs and weighted votes connected with an Associate Participant's use of the Radio System shall be assessed to the Member sponsoring the Associate Participant.

3.1.3. Interoperability Participants

If authorized, and subject to the conditions imposed by the Board of Directors, an Interoperability Participant may use the Radio System to support existing Members with intermittent public safety incidents. Interoperability Participants shall have no Cooperative

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voting rights or representation on the Board of Directors, Executive Committee, Technical 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. Interoperability Participants shall be responsible for purchasing, programming and maintaining any required subscriber units for this purpose as defined by the Board of Directors.

3.1.4. Conditional Participants

A non-Member agency or organization may use the Radio System 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 Cooperative voting rights or representation on the Board of Directors, Executive Committee, Technical 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. Emergency Medical Services Participants

An Emergency Medical Services Provider may become an Emergency Medical Services Participant if authorized by the Board of Directors to use the Radio System with the conditions as set forth by the Board of Directors. Emergency Medical Services Participants have no Cooperative voting rights or representation on the Board of Directors or the Executive Committee. Emergency Medical Services Participants may have one representative on the Operations Working Group. Unless directed otherwise by the Board of Directors, fees and costs will be assessed to Emergency Medical Services Participants.

3.1.6. Public Safety Service Participants

A provider of Public Safety Service may become a Public Safety Service Participant if authorized by the Board of Directors to use the Radio System with the conditions as set forth by the Board of Directors. Public Safety Service Participants have no Cooperative voting rights or representation on the Board of Directors or the Executive Committee. Public Safety Service Participants may have one representative on the Operations Working Group. Unless directed otherwise by the Board of Directors, fees and costs will be assessed to Public Safety Service Participants.

3.1.7. Admission

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Any entity, agency or organization in the Radio System service and expansion area, as defined by the Board of Directors, may apply for Membership or Participant user status. Membership or Participation will only be considered if all of the following occur:

- Applicant submits a written request to the Board of Directors;
- Board of Directors approves applicant's written request;
- Applicant enters into an agreement with the Cooperative that specifies the fees and costs the applicant shall pay to the Cooperative pursuant to Section 4 of this Agreement;
- Applicant enters into an agreement with the Cooperative that provides for long term use of frequencies, Equipment and Facilities shared or contributed by the applicant to improve the Network, increase capacity, or increase coverage;
- Applicant meets all conditions imposed by the Board of Directors; and
- Member applicant executes and becomes a party to this Agreement.

3.1.7.1. Evaluation Factors

The Board of Directors has the sole and absolute discretion to either summarily deny or consider applicants for Membership or Participant status. If the Board of Directors elects to consider an application, the Cooperative will conduct an Impact Assessment to determine costs, risks and benefits to the Cooperative. 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, being advised by the Operations Working Group and Technical Working Group, will develop a written recommendation, complete with financial, technical and Network operational impact statements, for Executive Committee review and Board of Directors approval.

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

- Impact on Radio Frequency coverage;
 - Impact on the Radio System 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;
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- Applicant's infrastructure;
- Applicant's user needs assessment;
- Transport Network availability;
- Cost impacts;
- Impact on current operations;
- Roaming impact on existing Members;
- Benefits to the Cooperative to admit the applicant; and
- Additional factors as determined by the Cooperative.

3.2. Cooperative Organization

The Cooperative organization shall have a Board of Directors, Executive Committee, and an Executive Director.

3.2.1. Board of Directors

The Board of Directors shall set Cooperative 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 Cooperative.

3.2.1.1.1. Representatives

Each Member is entitled to appoint one person to serve as that Member's Board of Directors Representative and one person to serve as an Alternate Representative. If the Board of Directors Representative is not present at a meeting, then the Alternate Representative of the Member shall act temporarily in place of the Board of Directors Representative and may exercise all powers of the Board of Directors Representative.

The Member shall notify the Executive Director in writing of the person who will serve as that Member's Board of Directors Representative and Alternate Representative. The appointment is effective when the Executive Director receives the written notice.

The Board of Directors Representative or Alternate Representative shall be vested with the authority to lawfully act on the Member's behalf with respect to the Cooperative. Each Member shall be bound by the acts of its Board of Directors Representative and/or Alternate

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Representative, and the Cooperative may rely on the act of a Board of Directors Representative and/or Alternate Representative the same as if such act were done by the Member.

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3.2.1.1.2. Removal or Replacement of Representative

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

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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 videoconference, 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 Cooperative. 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. Only Members in Good Standing are allowed to vote. Proxy votes are not permitted.

The voting rights of a Member shall be suspended for non-payment of the Member's financial obligations to the 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.

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.

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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: $\text{Weighted Votes} = 100 \times (\text{Total of Member's Subscriber Units} / \text{Total Subscriber Units activated for use on the Radio System})$. The number of Weighted Votes of each Member shall be recalculated at the beginning of each quarter or whenever a new Member joins the Cooperative.

A Weighted Vote shall pass by both the majority of the numerical vote 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, and the Board of Directors shall upon that request, submit any matter that cannot pass a Weighted Vote under Section 3.2.1.3.2 to mandatory mediation before a single mediator, as defined in Section 21.4 of the IGA.

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 seven Executive Committee Representatives appointed by the Board of Directors from persons nominated by Member entities. The Committee shall consist of: one (1) Pima County executive manager, one (1) City of Tucson executive manager, one (1) Law Enforcement executive manager; one (1) Fire Services executive manager; one (1) at large user or tribal executive manager; one (1) member Chief Information Officer (or equivalent); and one (1) executive manager from a Maintenance Provider or Network Managing Member. The initial appointment of the executive manager from a Maintenance Provider will be a City of Tucson representative. The composition of the Executive Committee shall not result in

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a single Member having majority representation on the Committee. 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 four (4) 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 videoconference, 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 of the members present is required to approve any action taken by the Executive Committee.

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3.2.3. Executive Director

The Board of Directors shall approve the process for selection and appointment of an Executive Director to perform Cooperative administrative duties. The selection and appointment process will comply with the internal Personnel Policies of the Administrative Managing Member. The Board of Directors will make final recommendations for appointment of the Executive Director to the Administrative Managing Member. The Executive Director will be an unclassified, at-will employee of the Administrative Managing Member. The Board of Directors will conduct annual performance reviews of the Executive Director and make retention recommendations to the Administrative Managing Member. The Executive Director will report to the Executive Committee and serve as an ex officio, non-voting member of the Cooperative 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 functions of the Cooperative;
 - Assemble working groups, in addition to the Technical and Operations Working Groups, as necessary to address 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 Cooperative;
 - Provide monthly Network performance reports;
 - Maintain contact information for all Members and member agencies;
 - Serve as the custodian of records for the day-to-day operation of the Cooperative and maintain this Agreement and all other records of the Cooperative in accordance with the records retention and disposition schedule of the Administrative Managing Member;
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- Annually update the PCWIN Business Plan, including a five-year financial forecast 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 (“OWG”) shall be responsible for addressing non-technical Radio System operational issues and maintaining Board of Directors approved comprehensive policies and procedures for the non-technical operation of the Radio System. The Operations Working Group shall review the Cooperative 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. OWG Representation

Each Member may have up to four (4) OWG representatives (“Agency Representatives”), with one (1) Agency OWG Representative each from a Law Enforcement Agency, Fire Services Agency, Municipal Agency and Dispatch Center. However, each Member may only have an OWG Representative from each agency for which the Member has actual users on the Radio System. Each Associate, Emergency Medical Services, and Public Safety Service Participant may have one (1) OWG representative. The OWG Representatives will act as liaisons to their respective agencies and are responsible for promptly notifying the OWG of issues potentially affecting Radio System operations.

3.2.5. Technical Working Group

The Technical Working Group (“TWG”) shall be responsible for addressing all technical, architectural and engineering issues and maintaining Board of Directors approved comprehensive policies and procedures for the technical operation and maintenance of the Network. The TWG shall review the Board of Directors approved policies and procedures on an as needed basis, but not less than bi-annually, and shall submit proposed revisions to the Executive Director for Board of Directors approval.

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3.2.5.1. TWG Representation

Each Maintenance Provider may have up to three (3) representatives from their respective technical support teams. The TWG is led by one (1) representative from the Network Managing Member.

The TWG will assign one (1) representative from a Network Managing Member and one (1) representative from a Maintenance Provider represented within the TWG to provide technical expertise to assist the OWG in making decisions regarding potential actions effecting the Network.

4. FINANCIAL MANAGEMENT

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

The Administrative Managing Member will establish one or more special revenue funds, including but not limited to, operating accounts, capital projects accounts and/or debt service accounts for the financial transactions of the Cooperative which are separate and distinct from any other funds of the Administrative Managing Member. It is the intent that the Cooperative holds the funds on a combined basis and each individual Member does not have a separate account. However, if Special Assessments or other fees are assessed on a basis that is not equal among all members separate ownership funds and accounts shall be established. The funds deposited into any Cooperative related funds or accounts are restricted funds and may be used only for the purposes set forth in this Agreement or in the IGA. Interest or interest expense will be applied monthly to each account or sub-account established under this Agreement. The interest or interest expense will be 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 deposited into the account or sub-account on which it was earned for uses authorized by this Agreement.

The Executive Director shall provide the Board of Directors copies of the Administrative Managing Members policies and procedures related to the review and approval of expenditures charged to the Cooperative.

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4.1. Budget and Financial Reporting

The Executive Director, in cooperation with the Operations Working Group and Technical Working Group, shall prepare a Preliminary Budget for the subsequent fiscal year, a Five-Year Financial Forecast, Fund Balance Reports and the presentation of material financial issues and assumptions to present to the Executive Committee, by November of each year.

After approval by the Executive Committee, the Board of Directors shall adopt each subsequent fiscal year's final operational and capital budget by December 31st of the prior fiscal year. The budget approved by the Board of Directors shall be the basis for developing the Annual Membership Fees. A copy of the adopted budget shall be provided to all Members and paying Participants by January 31st of the prior fiscal year.

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 and actual revenues and expenditures.

4.1.1. Preliminary Budget

The Preliminary Budget shall include all funding sources and all expenditures including but not limited to operational and maintenance costs, direct and indirect costs, planned capital costs for the subsequent fiscal year and transfers.

4.1.2. Five-Year Financial Forecast

The Five-Year Financial Forecast shall include all revenues and expenditures of the Cooperative including projected revenues, operational and maintenance expenses, and capital costs. The presentation of the forecast shall include the current year estimates, five projected years including the Preliminary Budget year plus four additional years. The Five-Year Financial forecast will include fund balance for all years presented and portions of fund balance with restricted uses will be identified. All significant issues and financial assumptions influencing the preparation of these reports shall be detailed and included as a part of the presentation. 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 Cooperative Operating Fund, the Infrastructure Replacement and Expansion Fund, and any other funds established related to the activities of the Cooperative. A Fund Balance Report shall provide a projection of annual fund balances through the period covered by the Five-Year Financial Forecast. The report shall identify any balances

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that are restricted and include recommendations regarding the adequacy of the fund balance reserve.

4.1.4 Financial Reporting

On a quarterly basis, the Administrative Managing Member shall provide a report to each Member which includes quarterly and fiscal year to date actual revenue and expenditures compared to the budgeted revenues and expenditures and a report that provides a listing of outstanding accounts receivables (billings) from all Members.

On an annual basis the Administrative Managing Member will provide a balance sheet, statement of revenues, expenditures and changes in fund balance for each accounting fund related to the Cooperative.

4.2. Funding

The Members, Emergency Medical Services Participants, and Public Safety Services Participants shall fund the Cooperative through Annual Membership Fees, Special Assessments, interest earnings, grants, and any other available funding source as determined by the Board of Directors.

4.2.1. Annual Membership Fee

Each Member agrees to pay an Annual Membership Fee which in aggregate of all Members and combined with other available revenues will fund the budget as adopted including the cost of Cooperative Administrative Services and Network Operations and Maintenance Services. In addition, the Fee will be assessed to maintain a Minimum Fund Balance. The Annual Membership Fee may include an assessment for Infrastructure Repair and Replacement if determined by the Board of Directors during the budget and rate setting process. Funds in excess of the Minimum Fund Balance requirement at the end of the fiscal year will be used to reduce the following year's Annual Membership Fee requirement unless the Board takes action to allocate excess funds to Infrastructure Repair or Replacement projects. Emergency Medical Services Participants and Public Safety Services participants are assessed the Annual Membership Fee.

Specific direct and indirect costs that will be included in the operating rate will be developed and presented to the Board of Directors for approval for determination of the Annual Membership Fees.

Repair and maintenance of Subscriber units is not included in the Annual Membership Fee. After the asset transfer of Subscriber Units purchased as part of the PCWIN project funding, the cost of replacement purchasing, maintaining and programming Subscriber Units shall be borne solely by the Member owning the Subscriber Units.

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4.2.1.1. Rate Approval

The Annual Membership Fee rate shall be adopted by the Board of Directors 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. Billing and Payment Basis

The Annual Membership Fee shall be assessed, billed and paid on a quarterly basis in advance. A Quarter is defined as the three month period beginning the first day of July, October, January and April. The Administrative Managing Member shall submit invoices forty-five (45) days prior to the first day of the Quarter to each member for the quarterly subscriber fees due. Payments are due on the first day of the Quarter or 45 days from the invoice date if the invoice date is less than 45 days from the beginning of the Quarter. Any other fees billed will be due 45 days from the invoice date. The Administrative Managing Member will transfer funds to pay for its quarterly share of the Annual Membership Fee at the first day of each Quarter, all other fees, including late payment fees and special assessments shall be transferred by the Administrative Managing member consistent with the payment schedule of other members.

Annual Membership Fee rate is established for the fiscal year and will only change as described in 4.2.1.3. Each Member shall pay the Annual Membership Fee rate for each Subscriber Unit in use on the Network at the time the fee is assessed. Changes to the number of Subscriber units using the Network will be not be adjusted for billing purposes mid-quarter.

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 Cooperative 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 Cooperative 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 20, Default and Cure, and Section 21, 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.

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

4.2.1.3. Interim Adjustments

If at any time during the current fiscal year, the Executive Director reasonably believes the budget used to determine the Annual Membership Fees is grossly inaccurate and the fund will be materially underfunded and the fund does not have adequate fund balance and/or liquidity to address any underfunding until the Annual Membership Fee rate can be adopted by the Board of Directors for the following fiscal year the Executive Director may present to the Executive Committee and Board of Directors a new budget. The Annual Membership Fee can be reduced during the fiscal year in material over-funding situations. Upon approval by the Board of Directors, the new budget shall be used to recalculate the Annual Membership Fee rate and new rates will be used to calculate the remaining Member fees due in that fiscal year.

If infrastructure replacement and enhancement projects are delayed, the Administrative Managing Member may propose interim changes to reduce the quarterly Annual Membership Fee rate. If infrastructure replacement and enhancement projects are advanced and the fund does not have adequate liquidity to prudently fund the advanced expenditure until the following fiscal year when rates can be revised to adjust for the advanced expenditure, a Special Assessment may be proposed by the Administrative Managing Member. Actions to change the Annual Membership Fee rate or implement a Special Assessment require approval by the Board of Directors.

4.2.1.4. Cooperative Operating Fund

The portion of the Annual Membership Fee assessed and collected to cover the cost of Cooperative administration services, Network operations and maintenance, and to maintain the minimum Cooperative Operating Fund balance, shall be deposited in the Cooperative Operating Fund.

4.2.1.4.1. Minimum Fund Balance Cooperative Operating Fund

Members agree to establish and maintain a minimum operating fund balance reserve equal to twelve and one half percent (12.5%) of yearly budgeted estimated total operation and maintenance costs excluding Infrastructure Repair and Replacement Charges and Special Assessments. It is anticipated that the Minimum Balance will be funded during the first year of operations through excess funds collected during the Initial Year Assessment. Any additional funds needed after the initial fiscal year to meet the Minimum Fund Balance will be assessed over the subsequent two fiscal years through the Annual Membership Fee rate. The Board of Directors shall approve any increase or decrease to the fund balance reserve.

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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.

The Members agree to establish the Infrastructure Replacement and Enhancement Fund reserve to replace specific infrastructure identified in the Business Plan. Each year, the Board of Directors shall establish an assessment to be included in the Annual Membership Fee rate that is intended to provide adequate funding over time to replace infrastructure in a timely manner and minimize the volatility in the Annual Membership Fee rate. An additional assessment may be included for system enhancements as determined by the Board of Directors. No Minimum Balance is established for the Infrastructure Replacement and Enhancement Fund, the Minimum Balance will be maintained as necessary to replace infrastructure and fund system enhancements as determined by the infrastructure replacement plan and the Board of Directors. Each Member's obligation shall be proportionate to its Subscriber Units in use on the Radio System at the time the fee is assessed. The Board of Directors shall approve any increase or decrease to the fund balance reserve.

4.2.1.5.1. Approved Uses

The Infrastructure Replacement and Enhancement Fund shall be used only for infrastructure replacements as defined in the Business Plan 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 Radio System 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 bill each Member for an amount sufficient to cover the shortage. These bills will be sent to each Member and payments for these billings must be received by the Administrative Managing Member within forty-five (45) days.

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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, the use of the Radio System 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. Any fees not assessed on an equal basis to all Members will be segregated in separate accounts for the individual member, each account will earn interest and will be the property of the individual Member not the Cooperative for use by the Cooperative for purposes for which the Special Assessment was assessed. Fees collected as a special assessment shall be deposited into a special revenue fund.

4.2.2.1. Cooperative Special Assessment Fund

The Cooperative Special Assessment 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.

4.2.2.1.1. Activity Statements

If separate Member accounts are established, on a quarterly basis, each Member will receive an Activity Statement for its Special Assessment Fund Project(s) Subsidiary Account(s). The statements will indicate dates and amounts of all payments made into the accounts, including interest payments, as well as expenditures charged to the accounts.

4.2.2.1.2. Settlements

After the project funded with the Cooperative Special Assessment Fund 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 of Directors approved funding plan for the project.

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4.2.2.2. Applicant Impact Assessment

Each entity, agency or organization considered for membership or participation 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, Emergency Medical Services Participant, and Public Safety Services Participant to the Cooperative 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 Radio System capacity or radio services coverage, proportionate share of any required reserve balances, and other costs deemed necessary to ensure existing Members receive the same services and benefits they received before the new Member joined the Cooperative. 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.

4.2.2.4. Existing Member Capacity and Coverage Upgrade

A request from an existing Member, Emergency Medical Services Participant, and Public Safety Services Participant expected to impact the Radio System coverage, capacity and/or performance of other Members will require the requestor 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 study 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, and the approval of the governing body of the Member which will contract with the granting authority. Grant funds acquired on behalf of the Cooperative will be used to reduce costs for the

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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 used for a project related to a Special Assessment 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.

4.3. Books and Records; Annual Financial Audit

The Administrative Managing Member shall keep and maintain proper and complete books, records and accounts of the financial activities of the Cooperative. The books, records and accounts of the Administrative Managing Member shall be available for inspection and audit by duly authorized representatives of any Member at all reasonable times.

An annual independent audit or review of Cooperative financial schedules and records will be conducted annually. All funds and accounts related to the Cooperative or Individual Members, will be included in the audit or review. The independent accounting firm will provided assurance that the balance sheet, statement of revenues, expenditures and changes in fund balance are fairly presented given an appropriate materiality level as determined by the independent audit firm. An analysis and report which provides assurance that the direct and indirect costs included in the Annual Membership Fee rate and the direct and indirect costs charged to any Cooperative accounts are proper, reasonable and fairly calculated. The report by the independent accountants will be made available to all Members.

4.4. Member 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 Cooperative to utilize 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, which are utilized by 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 Facilities and Equipment that are utilized by 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.

It is the responsibility of each Member to ensure the viability of the Network by keeping the Network functioning as a whole. Each Member agrees that as part of its obligations and

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commitments in support of the Cooperative that it will not dispose of or remove from the Network property or assets that it has allowed the Cooperative to use in the Network, if such removal would compromise the system as a whole unless it provides alternative equipment, services or facilities to ensure there is no adverse impact on the Network. A Member seeking to remove property or assets shall provide twenty four (24) months' notice to the Cooperative, and shall bear the expense of maintaining network integrity.

5. INSURANCE

5.1. 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.

5.2. Member-owned Property

Members are responsible for providing insurance, as directed by the Board of Directors, for all individually owned property brought into the network as described in Section 5.4 of this document.

Members are responsible to insure all personal property brought into the network as described in Section 5.4 of this document.

5.3. Liability Insurance

Each member shall provide individual liability insurance coverage as required by Section 5.4 of the IGA.

5.4. Insurance Programs

The Cooperative, 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 5, provided that the minimum requirements set forth in Section 5.4 of the IGA are met.

6. SERVICES

The Cooperative will develop policies, procedures and guidelines that govern how Members, Participants, Associates, and Conditional and Interoperability Participants obtain services,

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whether routine or emergency, establish Talkgroups, set priorities, determine roaming/site access, use encryption, and operate on the Radio System. When using the Radio System each Member shall abide by all policies, procedures and guidelines established by the Cooperative and the terms and conditions of all applicable Agreements.

6.1. Programming and Reprogramming

The Board of Directors authorized Network Managing Members and Maintenance Providers, shall program or reprogram all Subscriber Units with a valid Radio System key and encryption keys. All Subscriber Units shall only be programmed or reprogrammed with valid programming templates that have been approved by the Cooperative. 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.

6.2. Encryption

Maintenance Providers 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 Cooperative. The Cooperative may designate other agencies, such as Federal agencies, to provide key management services in special circumstances.

6.3. Radio System Management

The Board of Directors authorized Network Managing Member shall program, maintain, and manage the Radio System databases in a manner that minimizes the degradation of operational performance and the loss or corruption of data. Cooperative established policies and procedures applicable to Radio System management shall be followed by all in performing these duties.

6.4. Transport Network Management

Individual Maintenance Providers shall program, maintain, and manage the segments of the Transport Network that they provide.

The Network Managing Member will coordinate Transport Network service level commitments, software upgrades, repair and troubleshooting, and problem resolution with the Maintenance Providers.

6.5. Interoperability

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The Cooperative shall establish procedures and practices to support interoperability among all Radio System users. The Cooperative shall follow the National Incident Management System (NIMS) protocols for interoperable communications.

6.6. Training

Each Radio System user shall ensure that its users are properly trained prior to any use of the Radio System.

7. PERFORMANCE AND OPERATION

The Radio System 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 Radio System, the Cooperative shall follow the Cooperative design criteria and evaluation standards to protect both current and future Members. The Cooperative shall be responsible to maintain coverage, capacity and performance in accordance with public safety needs, requirements and standards. The Cooperative intends to maintain the existing Radio System coverage and capacity requirements; however, there are no guarantees of Radio System reliability and availability for new Members when operating within the existing service territory. The Cooperative 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.

8. MAINTENANCE

8.1. Maintenance Plans Intra/Inter Agency

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

8.2. Ownership and Responsibility for Repair of Subscriber Units

Upon delivery of Subscriber Units by Pima County to Members, all right, title and ownership shall automatically vest in the recipient Members, provided that all requirements of this Exhibit A and the IGA pertaining to maintenance and repair are met.

Each Member or Participant is solely responsible for the maintenance and repair of its Subscriber Units. Only Maintenance Providers, approved by the Cooperative shall be used for the maintenance and repair of Subscriber Units. Authorized Maintenance Providers shall adhere to

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Cooperative policies and procedures when maintaining and repairing Subscriber Units. All Radio System keys, encryption keys, and configuration programming must be performed by an authorized Maintenance Provider.

8.3. Subscriber Maintenance and Repair Rates

Each Maintenance Provider will annually establish published rates/prices for performing Subscriber maintenance and repair services.

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EXHIBIT B -- BUSINESS ASSOCIATE AGREEMENT to
Exhibit A to Resolution No. 21961

WHEREAS, COUNTY and Covered Member are parties to the attached Intergovernmental Agreement (“IGA”) pertaining to PCWIN; and,

WHEREAS, Covered Member is a “covered or hybrid entity” as defined in 45 CFR §160.103; and,

WHEREAS, the parties determined that Pima County (“COUNTY”) is a “business associate” of Covered Member as defined in 45 CFR §160.103; and,

WHEREAS, the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E require that an agreement be entered into specifying the ways in which COUNTY is permitted to use and disclose protected health information which is provided by Covered Member;

NOW, THEREFORE, COUNTY agrees to comply with and be bound by the following Business Associate Agreement provisions:

1. Definitions. Terms used, but not otherwise defined in this Exhibit shall have the same meaning as those terms in 45 CFR § 160.103 and § 164.501 as currently drafted or subsequently amended.

- 1.1 “Business associate” means COUNTY
- 1.2 “Covered entity” means Covered Member
- 1.3 “HITECH” means the provisions of the Health Information Technology for Economic and Clinical Health Act enacted on February 17, 2009 as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (PL 111-5).
- 1.4 “Individual” has the same meaning as the term “individual” in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.5 “Minimum necessary” means the standard as set forth in 45 CFR §164.502(b).
- 1.6 “PHI” means “protected health information” the term is defined in 45 CFR 164.501, limited to the information created or received by the business associate from or on behalf of the covered entity.
- 1.7 “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

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- 1.8 “Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, subpart C.

2. Permissive uses of PHI by business associate.

- 2.1 Services. Except as otherwise specified herein, business associate may make only those uses of PHI necessary to perform its obligations under the IGA provided that such use or disclosure would not violate the Privacy Rule if done by the covered entity. All other uses not authorized by this Exhibit are prohibited, unless agreed to in writing by Covered Member.

- 2.2 Activities. Excepts as otherwise limited in this Exhibit, business associate may:

2.2.1 Use the PHI for the proper management and administration of the business associate and to fulfill any present or future legal responsibilities of business associate provided that such uses are permitted under State and Federal confidentiality laws.

2.2.2 Disclose the PHI to a third party for the proper management and administration of the business associate, provided that:

2.2.2.1 Disclosures are required by law; or

2.2.2.2 Business associate obtains reasonable assurances from the third party that the PHI will remain confidential and not be used or further disclosed except as required by law or for the purpose for which it was disclosed to that third party and the third party notifies the business associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

3. Obligations of business associate with respect to PHI.

- 3.1 With regard to use and disclosure of PHI provided by covered entity, business associate agrees not to use or further disclose PHI other than as permitted or required by this Exhibit or as required by law.
- 3.2 With regard to use and disclosure of PHI provided by covered entity, business associate further agrees to:
- 3.2.1 Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Exhibit;
- 3.2.2 Mitigate, to the extent practicable, any harmful effect that is known to business associate of a use or disclosure of PHI by business associate in violation of the requirements of this Exhibit;
- 3.2.3 Report to covered entity, in writing, any use or disclosure of PHI not permitted or required by this Exhibit of which it becomes aware within fifteen (15) days of business associate’s discovery of such unauthorized use or disclosure;

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- 3.2.4 Ensure that any agent, including a subcontractor, to whom business associate provides PHI agrees in writing to the same restrictions and conditions on use and disclosure of PHI that apply to business associate;
 - 3.2.5 Make available all records, books, agreements, policies and procedures relating to the use or disclosure of PHI to the Secretary of HHS for purposes of determining covered entity's compliance with the Privacy Rule, subject to applicable legal privileges;
 - 3.2.6 Make available, within seven (7) days of a written request, to covered entity during normal business hours at business associate's offices all records, books, agreements, policies and procedures relating to business associate's use or disclosure of PHI to enable covered entity to determine business associate compliance with the terms of this Exhibit;
 - 3.2.7 Provide access to PHI to the covered entity or the individual to whom PHI relates at the request of and in the time and manner chosen by covered entity to meet the requirements of 45 CFR § 164.524;
 - 3.2.8 Make any amendment(s) to PHI that covered entity directs pursuant to 45 CFR § 164.526;
 - 3.2.9 Provide, within fifteen (15) days of a written request, to covered entity such information as is request by covered entity to permit covered entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 CFR § 164.528; and
 - 3.2.10 Disclose to subcontractors, agents or other third parties, and request from covered entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted under the IGA.
- 3.3 With regard to securing PHI provided by covered entity, business associate agrees to comply with the requirements for business associates established by HITECH, the Security Rule and such modifications or additions to the Security Rule as may be established by the Secretary of the U.S. Department of Health and Human Services related to the Security Rule.

4. Term and Termination.

- 4.1 Term. This Exhibit shall become effective upon the date COUNTY first handles PHI on behalf of Covered Member, and shall continue in effect until all obligations of the Parties have been met, Covered Member or COUNTY are no longer parties to the IGA, or as provided in this Section 4.
- 4.2 Termination by Covered Member. Upon Member's knowledge of a material breach or violation of the terms of this Exhibit by business associate, Member in its sole discretion, may:
 - 4.2.1 Immediately terminate the Exhibit; or,
 - 4.2.2 Provide business associate with an opportunity to cure the breach or violation within the time specified by Covered Member. If business

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associate fails to cure the breach or end the violation within the time specified by Covered Member, then Covered Member will either:

4.2.2.1 Terminate the Exhibit; or,

4.2.2.2 If Covered Member determines termination is not feasible, report the breach or violation to the Secretary of HHS.

4.3 Effect of termination.

- 4.3.1 Upon termination of the Exhibit, for any reason, business associate agrees to return or destroy all PHI, if it is feasible to do so, and retain no copies thereof. Return or destruction shall occur within 60 days of the termination of the Exhibit. Business associate shall, upon return or destruction of PHI, provide written attestation to Covered Member that all PHI held by business associate has been returned to Covered Member or has been destroyed.
- 4.3.2 Business associate further agrees to recover any PHI in the possession of its subcontractors, agents or third parties to whom business associate has provided PHI and return or destroy such PHI within the 60 days after termination of the Exhibit. Business associate shall, upon return or destruction of PHI, provide written attestation to Covered Member that all PHI held by business associate has been returned to Covered Member or has been destroyed.
- 4.3.3 If return or destruction of PHI is not feasible, business associate shall:
- 4.3.3.1 Notify covered entity in writing of the specific reasons why the business associate has determined it is infeasible to return or destroy the PHI;
- 4.3.3.2 Agree to extend any and all protections, limitations, and restrictions contained in this Exhibit to business associate use and disclosure of any PHI retained after the termination of this Exhibit; and
- 4.3.3.3 Agree to limit any further uses and disclosures to those allowed under the Privacy Rule for the purposes that make the return or destruction of PHI infeasible.
- 4.3.4 If it is not feasible for business associate to obtain PHI in the possession of a subcontractor, agent, or third party to whom business associate has provided PHI, business associate shall:
- 4.3.4.1 Provide a written explanation to the covered entity why the PHI cannot be obtained;
- 4.3.4.2 Require the subcontractor, agent, or third party to agree, in writing, to extend any and all protections, limitations, and restrictions contained in this Exhibit to the subcontractor's, agent's, or third party's use and disclosure of any PHI retained after the termination of this Exhibit; and
- 4.3.4.3 Require the subcontractor, agent, or third party to agree, in writing, to limit any further uses and disclosures to those allowed under the Privacy Rule for the purposes that make it infeasible for the business associate to obtain the PHI.

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5. Miscellaneous.

- 5.1 Survival. Sections 4.3 and 2.1 solely with respect to PHI retained by the business associate in accordance with Section 4.3.3 and 4.3.4, shall survive the termination of the IGA between Covered Member and County.
- 5.2 Superseding Effect. Should the terms of this Exhibit conflict with the terms of the IGA, the terms providing for more stringent protections of PHI shall apply. Nothing contained in this Exhibit shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements, or limitations of the IGA other than as stated above in this Exhibit.

Exhibit 2: Silverbell Fire Membership Fees

Agency Name	Silverbell Fire
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	Totals
# of Mobiles	10
# of Portables	16
# of Control Stations	0
# of DVRs	0
Totals	26

Monthly Membership Fees for One Year *(Per radio/Per month)* *Fees subject to change

		24/25
Type of Radio	# of	\$37
Mobiles	10	\$370
Portables	16	\$592
Control Stations	0	0
DVRs	0	0
Total Radios	26	
Monthly Totals		\$962
Quarter Totals		\$2886
Annual Totals		\$11,544

Monthly Membership Fees for Additional Years *(Per radio/Per month)* *Fees subject to change

		25/26	26/27	27/28	28/29
Type of Radio	# of	\$37	\$37	\$37	\$37
Mobiles	10	\$370	\$370	\$370	\$370
Portables	16	\$592	\$592	\$592	\$592
Control Stations	0	0	0	0	0
DVRs	0	0	0	0	0
Total Radios	26				
Monthly Totals		\$962	\$962	\$962	\$962
Quarter Totals		\$2886	\$2886	\$2886	\$2886
Annual Totals		\$11,544	\$11,544	\$11,544	\$11,544

Exhibit 3

PIMA COUNTY WIRELESS INTEGRATED NETWORK

PROJECT: SUBSCRIBER SERVICES

GRANTEE: SILVERBELL FIRE

CONTRACT NO.: CT2400000025

ANNUAL REVENUE: \$ 1,610.00

**Professional Services Agreement
between
Pima County and Arizona Department of Emergency and Military Affairs
on behalf of Silverbell Fire Department
for PCWIN Subscriber Services**

This Professional Services Agreement ("**Agreement**") is entered into by and between Pima County, a body politic and corporate of the State of Arizona ("**County**") and the Arizona Department of Emergency and Military Affairs/Silverbell Fire Department, ("**Silverbell Fire**"), pursuant to Pima County Board of Supervisors Resolution 2013-89 (individually, "Party" and together, the "Parties").

1. Background.

- 1.1. County has implemented a regional public safety communications network known as the Pima County Wireless Integrated Network ("**PCWIN**").
- 1.2. County and numerous other parties entered into an Intergovernmental Agreement to Operate, Maintain, Sustain, Improve, and Finance the Pima County Wireless Integrated Network (SC2400000053 FKA CT-WIN-23*387 and CT-OEM-13*400), which became effective November 13, 2012 (copy attached as **Exhibit 1**). That agreement created the PCWIN Cooperative (the "**Cooperative**") and included (as **Exhibit A** incorporated herein) the Pima County Wireless Integrated Network Cooperative Governance Document (the "**Governance Document**").
- 1.3. County is the Administrative Managing Member of the Cooperative and has contracting authority for the Cooperative. County is entering into this Agreement in its capacity as the Administrative Managing Member and with the authorization of the Pima County Wireless Integrated Network ("**PCWIN**") Board of Directors.
- 1.4. Silverbell Fire has been accepted as a Public Safety Service Participant in the PCWIN communications network under a separate Intergovernmental Agreement between the Parties, (copy attached as **Exhibit 2**).
- 1.5. Silverbell Fire wants to use radio subscribers on PCWIN and does not have the ability to maintain same.
- 1.6. County has facilities and resources to maintain and service PCWIN subscriber equipment and County is willing to provide communication service and equipment

maintenance to Silverbell Fire.

2. **Definitions.** This Agreement includes certain terms that are defined in the Governance Document. Those terms have the same meaning in this Agreement as they are defined in the Governance Document.
3. **Purpose.** The purpose of this Agreement is to establish subscriber services for Silverbell Fire that include the provision of communication service and equipment maintenance by County to Silverbell Fire as follows:
 - 3.1. County, through the PCWIN Wireless Services Division, will provide communication equipment maintenance to Silverbell Fire. County will provide all services at the Pima County Emergency Management Center (the "**County facility**") located at 3434 E. 22nd Street, Tucson, Arizona, 85713. County will only provide communication equipment maintenance to PCWIN communications equipment owned or leased by Silverbell Fire, and Silverbell Fire must clearly mark or identify all affected equipment as such.
 - 3.2. Silverbell Fire will be liable for all damages to the County facility caused by Silverbell Fire's employees or other agents and shall have no liability for any other damages to the County facility.
4. **Payments.**
 - 4.1. County will invoice Silverbell Fire for maintenance services each month through County's Finance Department, Revenue Management Division. County will invoice the services in arrears. The current rates are listed in **Exhibit 3**. Silverbell Fire must pay County within thirty (30) days of receipt of County's invoice. If Silverbell Fire does not pay County within thirty (30) days, County will send a written demand for payment to Silverbell Fire and Silverbell Fire will have ten (10) days to pay the full amount due. If Silverbell Fire fails to pay the amount due before the deadline, County may terminate this Agreement immediately upon written notice.
 - 4.2. Silverbell Fire may select a new maintenance option, either monthly maintenance or time and material, by providing written notice to County. If Silverbell Fire does not want any changes, the existing maintenance terms will remain in effect.
 - 4.3. County may increase the rates in **Exhibit 4** if County's actual costs for labor or materials increase. County will provide Silverbell Fire with sixty (60) days' written notice of any increase in rates or charges.
5. **Term and Termination.**
 - 5.1. This Agreement will be effective on the date it is fully executed by both Parties and will continue for a period of one (1) year unless it is, prior to the expiration of such period, extended or terminated by agreement of the Parties. This Agreement will automatically renew for terms of one (1) year by mutual agreement from both Parties unless otherwise terminated as allowed by this Agreement. Notwithstanding the foregoing, this Agreement automatically terminates upon dissolution of the Cooperative.

- 5.2. The Parties may terminate this Agreement at any time during the term of the Agreement or any extended term by first providing not less than ninety (90) days prior written notice to the other Party.
6. **Disposal of Property.** Upon the termination of this Agreement, all property involved will revert back to its owner. Termination will not relieve any Party from liabilities or costs already incurred under this Agreement, nor affect any ownership of property pursuant to this Agreement.
7. **Warranties; Disclaimer.** County guarantees communication equipment maintenance work for ninety (90) days and will pass on to Silverbell Fire any parts warranty provided by the manufacturer. If County communication equipment maintenance work or replacement parts fail in normal service within that period, County will make additional repairs at no additional charge to Silverbell Fire. County provides no other express warranty on communication equipment maintenance work. Any implied warranty of merchantability or fitness is limited to the 90-day duration of this warranty. No other warranties are being provided by either Party to the other Party.
8. **Indemnification.** County (as Indemnitor) agrees to indemnify, defend and hold harmless the other Party (as Indemnitee) from and against any and all claims, losses, liability, costs or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "claims") for bodily injury of any person (including death) or property damage, but only to the extent that such injury or damage is caused or alleged to be caused by a negligent or intentionally wrongful act or omission of the Indemnitor, or of any of its officers, officials, agents, employees, or volunteers.
9. **Insurance.** Each Party warrants that it is self-insured or otherwise maintains adequate insurance to fully cover its liability under this Agreement.
10. **Compliance with Laws.** The Parties will comply with all federal, state and local laws, rules, regulations, standards, and Executive Orders. The laws and regulations of the United States of America State of Arizona will govern the rights of the Parties, the performance of this Agreement, and any disputes. Any action relating to this Agreement will be brought in a court in Pima County. The Parties shall comply with A.R.S. § 23-214, and shall ensure that any contractors that they may employ in conjunction with this Agreement shall comply with this statute.
11. **Non-Discrimination.** The Parties will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow-down of all provisions and requirements to any contractors. During the term of this Agreement, the Parties will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.
12. **ADA.** The Parties will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. §§ 12101–12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
13. **Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

14. **Non-Appropriation.** Notwithstanding any other provision in this Agreement, this Agreement may be terminated if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Agreement. In the event of such cancellation, the Parties will have no further obligations under this Agreement other than for payment for services rendered prior to cancellation.
15. **Worker's Compensation.** Each Party will comply with the notice of A.R.S. § 23-1022 (E). For purposes of A.R.S. § 23-1022, irrespective of the operations protocol in place, each Party is solely responsible for the payment of Worker's Compensation benefits for its employees.
16. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement will be construed to, create any partnership, joint venture or employment relationship between the Parties or create any employer-employee relationship between a Party and the employees of the other Party. Neither Party will be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.
17. **Third-Party Beneficiaries.** All Cooperative members and other participants in the Cooperative are intended third-party beneficiaries of this Agreement. Except as otherwise provided by the first sentence of this Section 17, this Agreement is entered into for the sole and exclusive benefit of the Parties, no other person shall claim any implied right, benefit or interest in this Agreement, and the Parties do not intend to create rights in or remedies to any such third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established under this Agreement.
18. **Notice.** Any notice required or permitted to be given under this Agreement must be in writing and served by delivery or by certified mail upon the other Party as follows (or at such other address as may be identified by a Party in writing to the other Party):

19.

County:

PCWIN Executive Director
 3434 E. 22nd Street
 Tucson, AZ 85713

Silverbell Fire: WESTERN ARMY AVIATION
 TRAINING SITE

22440 E. PINAL AIRPARK RD, BLDG L4320
 SILVERBELL ARMY HELIPORT STATION 360
 MARANA, AZ 85653

20. **Amendment.** This Agreement may only be modified, amended, altered or changed by written agreement signed by the Parties.
21. **Severability.** If any provision of this Agreement, or any application of a provision to the Parties or any person or circumstance, is found by a court to be invalid, that invalidity will

not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application.

22. **Legal Authority.** Neither Party warrants to the other its legal authority to enter into this Agreement. If a court, at the request of a third person, should declare that either Party lacks authority to enter into this Agreement, or any part of it, then the Agreement, or parts of it affected by such order, will be null and void, and no recovery may be had by either Party against the other for lack of performance or otherwise.
23. **Entire Agreement.** The Parties' entire agreement pertaining to the subject matter addressed herein consists of this document and all exhibits attached to it, including a second Agreement between the Parties titled "Intergovernmental Agreement between Pima County and Silverbell Fire Department as a Public Safety Service Participant," a copy of which is attached as **Exhibit 2**. All prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this agreement between the Parties.
24. **Integration.** All prior or contemporaneous agreements and understandings, oral or written, are superseded and merged into this agreement between the Parties.
25. **Effective Date.** This Agreement will become effective when all Parties have signed it. The effective date of the Agreement will be the date this Agreement is signed by the last Party (as indicated by the date associated with that Party's signature).

SIGNATURE PAGE TO FOLLOW

PIMA COUNTY Wireless Integrated
Network



Robert Meredith
PCWIN Executive Director

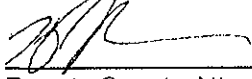
9/17/2024
Date

Arizona Department of Emergency and
Military Affairs

Major General Kerry Muehlenbeck,
Adjutant General of Arizona

Date

APPROVED AS TO FORM



Deputy County Attorney

Kyle Johnson
Print DCA Name

9/17/2024
Date