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**INTERGOVERNMENTAL AGREEMENT  
FOR SHARING OF TELECOMMUNICATIONS FACILITIES  
BETWEEN  
THE CITY OF PHOENIX No.  
AND  
THE CITY OF SURPRISE No.**

This Intergovernmental Agreement (IGA) for Sharing of Telecommunications Facilities is entered into by and between the City of PHOENIX, on behalf of the Regional Wireless Cooperative (RWC), and the City of SURPRISE, and is effective on the date of the last signature below ("Effective Date"). The parties are sometimes referred to jointly herein as "AGENCIES" and individually as "AGENCY."

**RECITALS**

**WHEREAS** PHOENIX and SURPRISE have the power to execute intergovernmental agreements; and

**WHEREAS** PHOENIX and SURPRISE have agreed to participate in sharing of telecommunications facilities and/or services owned and/or operated by each agency under the conditions set forth in this sharing agreement; and with each other for mutual benefit and to facilitate collaboration with each other; and

**WHEREAS** potential electronic sites are limited, and in order to avoid a proliferation of site developments by a number of users, it is in the public interest for both AGENCIES to share those facilities that serve the common good,

**IT IS HEREBY AGREED**, by and between the AGENCIES, as follows:

**1. DEFINITIONS:**

- 1.1. "Telecommunications Facility" (Facility) or in the plural "Telecommunications Facilities" (Facilities) shall mean existing telecommunications tower(s) and building(s) or space for buildings located at or near the base of the existing tower to house equipment.
- 1.2. "Site-Specific Application" (Application) shall mean the requesting AGENCY's application to locate specific telecommunications equipment and material within or on the host AGENCY's Facility, including any applicable exhibits. The Application shall be completed by the requesting AGENCY and approved by the host AGENCY prior to installation of equipment.
- 1.3. "Site-Specific Supplement" (or "SSA") shall mean any subsequent Application that may, upon the host AGENCY's approval, be appended to this IGA. All Supplemental Applications to this IGA will be governed by the terms of this IGA.
- 1.4. "Regional Wireless Cooperative" (or "RWC") The cooperative that was formed by the Parties to jointly plan, design, construct, operate, maintain, and finance the Network; the operations of which cooperative are governed by IGA #124822.

2. FACILITIES OWNERSHIP:

- 2.1. The host AGENCY grants the requesting AGENCY use of the Facility in accordance with the terms of this IGA.
- 2.2. The host AGENCY shall be the owner and/or operator of the Facility.
- 2.3. The requesting AGENCY shall be the owner of the communications equipment installed within or on the Facility.

3. TERM: The term of this IGA shall be for ten (10) years, commencing on the Effective Date and ending on June 30, 2033.

4. OPTION TO EXTEND: This AGREEMENT will automatically be renewed for an additional ten (10) year term under the same terms and conditions as stated in this IGA and any intervening amendments thereof unless terminated by either party.

5. FREQUENCY LICENSING AND PROTECTION:

- 5.1. Each AGENCY shall ensure it is operating telecommunications equipment at the site in compliance with current licenses issued by the Federal Communications Commission (FCC).
- 5.2. In the event that interference issues arise with either AGENCY's equipment and it is determined that the interfering AGENCY is in compliance with its FCC license, then both AGENCIES will cooperate and work together to equitably resolve the problem per established FCC guidelines.
- 5.3. Each AGENCY shall be responsible for resolving interference problems generated by its equipment which affect existing frequencies employed by the other AGENCY, and shall bear the cost of such resolution.

6. RIGHTS-OF-WAY: The AGENCIES will cooperate with each other in obtaining any necessary consents or rights-of-way should the underlying ownership to the site be in a person other than one of the AGENCIES.

7. RECIPROCAL USE, RIGHTS, AND OBLIGATIONS:

- 7.1. Subject to the terms of this IGA, the host AGENCY agrees to allow the requesting AGENCY to use its Telecommunications Facilities for uses associated with the Regional Wireless Cooperative Network without a usage fee where: a) such use is acceptable to the host AGENCY as determined in its sole discretion; b) there is sufficient space, power, tower capacity and future growth for these items; c) the requested usage would not cause substantial interference with the telecommunications operations or service of the host AGENCY; and d) such use is not prohibited by this or other agreements.
- 7.2. Each AGENCY shall have its transmitter frequencies examined by the telecommunications manager for the facility where the installation is to take place to detect any potential cause of interference at the telecommunications site. Transmitters shall employ isolators, circulators, resonant cavities and other devices to reduce interference as state-of-the-art and good engineering practices dictate.
- 7.3. The host AGENCY and its agents, subcontractors, and any other party under such AGENCY's control shall take reasonable precautions to protect the requesting AGENCY'S equipment located at the facility, but shall not be responsible for damage to, or loss of, such equipment whether by fire, theft or otherwise unless caused by negligence or intentional misconduct of the host AGENCY or its agents, subcontractors, and any other party under such AGENCY's control.

- 7.4. Each AGENCY (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other AGENCY (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.
- 7.5. Private vendor(s) on contract with an AGENCY shall be escorted by an employee of that AGENCY when working at the telecommunications site.
8. SITE-SPECIFIC SUPPLEMENTALS: Whenever either AGENCY desires to share additional telecommunications facilities owned and/or operated by the other AGENCY, such AGENCY shall give the other written notification specifying the site and the character of the equipment which the requesting AGENCY desires to install at the site. If the other AGENCY accepts the request, the AGENCIES shall then enter into an SSA which shall set forth additional terms and conditions with respect to the requesting AGENCY's use of the site. Each of these SSAs shall make reference to this IGA and become supplements to this IGA. Nothing herein shall compel an AGENCY to make available any site.
9. REMOVAL OF EQUIPMENT: Each AGENCY will remove its equipment from the host AGENCY'S property and return the property to its original condition, except for reasonable wear and tear, within ninety (90) days following any termination of this IGA by either AGENCY.
10. MAINTENANCE: Communications equipment installed at the site shall be maintained by the owner of the equipment. The host AGENCY shall provide 24-hour-per-day access to the site by the requesting AGENCY for preventive and corrective maintenance activities. Preventive and corrective maintenance performed by either AGENCY that may affect the other AGENCY's equipment or network systems shall be coordinated between the AGENCIES prior to the start of work. Because this equipment supports public safety operations, network service interruptions shall be kept to an absolute minimum.
11. CONSULTING FEES: Any consulting fees incurred shall be paid by the AGENCY employing the consultant.
12. SUCCESSORS AND ASSIGNS: This IGA shall be binding upon the AGENCIES and upon their successors. An AGENCY may assign its rights or obligations under this IGA only upon written approval of the other AGENCY.
13. MODIFICATION: Any amendment or modification of this IGA shall be in writing and shall be effective only after signature of each of the AGENCIES. In the event of any conflict in the provisions of this IGA and any Site-Specific Application, the provisions of the Application shall control.
14. NOTICE: Any notice, consent or other communication required or permitted under this IGA shall be in writing and: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent by facsimile transmission; (4) deposited with any commercial air courier or express service; or (5) deposited in the United States mail.
15. TERMINATION: The host AGENCY may terminate this IGA or the requesting AGENCY'S use of any facility at any time by giving no less than three hundred sixty-five (365) calendar days' written notice to the requesting AGENCY. The requesting AGENCY may terminate this IGA or its use of the host AGENCY's facility at any time by giving no less than ninety (90) calendar days' written notice to the host AGENCY. In the event this IGA is terminated, all Site-Specific Applications will terminate automatically on the same date as the termination of this IGA.

16. TRANSACTIONAL CONFLICTS OF INTEREST: Each AGENCY acknowledges that this IGA is subject to cancellation pursuant to the provisions of Section 38-511, Arizona Revised Statutes.
17. GOVERNING LAW: This IGA shall be construed and interpreted in accordance with the laws of the State of Arizona.
18. BOOKS: To the extent required by A.R.S. § 35-214, the parties agree to retain all books, accounts, reports, files, and other records relating to the IGA and to make such records available at all reasonable times for inspection and audit by the City or the Auditor General of the State of Arizona, or their agents, during the term of and for a period of 5 years after the completion of the IGA.
19. EMPLOYMENT: The personnel of either AGENCY will not for any purpose be considered employees or agents of the other AGENCY and that each AGENCY assumes full responsibility for the actions of its personnel while performing services under this IGA, and shall be solely responsible for their supervision, daily direction, and control, payment of salary (including withholding income taxes and social security), and worker's compensation and disability benefits.
20. NOTICE: Any notice or other communication required or permitted to be given under this Agreement must be in writing. Notices will be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (iii) given to a recognized and reputable overnight delivery service, to the address set forth below, or (iv) delivered by facsimile transmission to the number set forth below or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this section.

If intended for the City of Surprise:  
City of Surprise  
Information Technology Department – Technical Services Manager  
16000 N. Civic Center Plaza  
Surprise, AZ 85374  
Telephone: (623) 222-7500  
Fax: (623) 222-7501

If intended for the City of Phoenix:  
Regional Wireless Cooperative  
C/O City of Phoenix City Manager's Office  
200 W. Washington St.  
Phoenix, AZ 85003  
Telephone: (602) 495-5765  
Fax: (602) 459-5698

Notices are deemed received (i) when delivered to the party, (ii) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (iv) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party will mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

**IN WITNESS WHEREOF**, the parties herein have caused this IGA to be executed in triplicate originals.

**CITY OF SURPRISE**, a municipal corporation  
Bob Wingenroth, City Manager

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

In accordance with A.R.S. Sec, 11-952, this Agreement has been reviewed by the undersigned attorney who has determined that this Agreement is in proper form and within the powers and authority granted to the City of Surprise under the laws of the State of Arizona.

\_\_\_\_\_  
City Attorney

**ATTEST:**

\_\_\_\_\_  
City Clerk

**CITY OF PHOENIX**, a municipal corporation  
Jeff Barton, City Manager

By: \_\_\_\_\_

John Imig  
Executive Director, Regional Wireless  
Cooperative

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

In accordance with A.R.S. Sec, 11-952, this Agreement has been reviewed by the undersigned attorney who has determined that this Agreement is in proper form and within the powers and authority granted to the City of Phoenix under the laws of the State of Arizona.

\_\_\_\_\_  
Acting City Attorney

**ATTEST:**

\_\_\_\_\_  
City Clerk