

When Recorded Return To:
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**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT TO
PLAN, DESIGN, CONSTRUCT, OPERATE, MAINTAIN AND FINANCE
THE TOPAZ REGIONAL WIRELESS COOPERATIVE NETWORK**

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1. Parties. This Amended and Restated Intergovernmental Agreement ("Agreement") is entered into by and between the City of Mesa, the City of Apache Junction, Apache Junction Fire District, the Town of Gilbert, the Town of Queen Creek and the Rio Verde Fire District (the "Parties").

2. Recitals.

2.1. The City of Mesa, the City of Apache Junction, Apache Junction Fire District, the Town of Gilbert and the Town of Queen Creek entered into an Intergovernmental Agreement to Plan, Construct, Operate, Maintain and Finance the TRWC Network Contract Number 2008-3002-0359 and dated August 7, 2008 (the "August 7, 2008 Agreement").

2.2. This Agreement supercedes and replaces in its entirety the August 7, 2008 Agreement and the Governance Agreement dated April 8, 2008 attached as Exhibit A to the August 7, 2008 Agreement.

2.3. The Parties enter into this Agreement for the purpose of planning, designing, constructing, operating, maintaining and financing the TRWC.

2.4. The Parties are authorized to enter into this Agreement by the joint exercise of powers provisions of Title 11, Chapter 7, Article 3 (§§ 11-951 et seq.), Arizona Revised Statutes and the authorization of their legislative or other governing bodies.

2.5. The Parties agree to establish the TRWC, an unincorporated association of the Parties, to jointly and cooperatively exercise their powers to achieve the purposes specified in paragraph 2.3.

2.6. The TRWC shall use its reasonable efforts, through cooperation and the pooling of common resources, to improve communications and operations among various public safety and public service agencies.

2.7. The rules and policies governing the TRWC's regulation and management are set forth in a governance document ("Governance Agreement"), which is attached to this Agreement as Exhibit A and incorporated herein and made a part of this Agreement by this reference. Certain terms that are defined in the Governance Agreement are used in this Agreement. Those terms shall have the same meaning in this Agreement as such terms are defined in the Governance Agreement.

2.8. It is the Parties' intention that the Governance Agreement be enforceable to the same extent as this Agreement. The Governance Agreement shall be subject to amendment as provided herein and shall be valid for the duration of this Agreement. The Governance Agreement is approved by all Parties and shall be binding upon any Parties that are admitted after the initial Parties. No additional Parties shall be admitted to the TRWC without first agreeing to be as bound by the Governance Agreement as are the Parties hereto.

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3. Term and Duration of Agreement; Dissolution.

3.1. The "Effective Date" of this Agreement is May 1, 2012. The initial term of this Agreement is five (5) years commencing on the Effective Date and ending on April 30, 2017; thereafter, the Agreement will automatically renew for terms of five (5) years. All Parties shall execute this Agreement and comply with the requirements of A.R.S. § 11-952, which includes appropriate action by the legislative or other governing body of the Party for the approval of the Agreement, determination by the Party's attorney that the Agreement is within the powers and authority of the Party, and the proper filing of the Agreement. This Agreement shall continue until such time as the TRWC is dissolved.

3.2. The Parties do not anticipate that the TRWC will be dissolved until it is no longer desirable and feasible for the TRWC to operate the Network or the Network is transferred to another entity.

3.3. If the Parties dissolve the TRWC other than by transferring the Network to another entity, the assets of the TRWC shall be returned to the Members in proportion to their contributions to the TRWC as determined in section 10.2 of the Governance Agreement.

4. Manner of Financing.

4.1. The cost of planning, designing, constructing, operating and maintaining the Network shall be paid in the manner specified in the Governance Agreement.

4.2. Each Party agrees to timely pay its share of the cost of planning, designing, constructing, operating and maintaining the Network as specified in the Governance Agreement. Each Party shall render its amounts payable to the TRWC no later than thirty (30) days from the invoice date. The TRWC may collect interest at the rate of one percent (1 %) per month for payments not received thirty (30) days from the invoice date. The interest collected shall be deposited in the operating and maintenance budget and used to offset the costs of operation and maintenance.

4.3. It will be the responsibility of each Party to this Agreement to take the appropriate steps in conformity with state or local laws to ensure that it appropriates sufficient funds to cover the obligations it assumes under this Agreement. Each Party recognizes that the performance by the Parties under this Agreement may be dependent upon the appropriation of funds to or by that Party. Should any Party fail to appropriate or fail to be appropriated the necessary funds, that Party may withdraw from this Agreement as specified in Section 6 on the last day of the fiscal period for which funds are legally available and, notwithstanding anything to the contrary in this Agreement or Section 5.10 of the Governance Agreement, subject to Board of Directors approval, shall forfeit all or a portion of the equipment and real property owned by such Member that is used in the Network as determined by the Board of Directors. 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. Except as otherwise provided in this Section 4.3, the ownership of equipment and real property that is used in the Network shall be governed by Section 5.10 of the Governance Agreement.

4.4. Each Party understands and acknowledges that claims and lawsuits may be filed for damages resulting from acts or omissions in connection with planning, designing,

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constructing, operating, maintaining and financing the Network or that other unforeseen costs and expenses may be incurred in connection with the planning, designing, constructing, operating, maintaining and financing the Network. The Parties agree that all damages, costs and expenses not specifically provided for in this Agreement, shall be shared by the Parties in proportion to each Party's share of the total weighted votes, in accordance with Section 4.3.6.3 of the Governance Agreement, at the time the claim or lawsuit, whichever first occurs, is first served on any Party or the unforeseen costs or expenses were incurred. Each Party shall promptly notify the TRWC and the Administrative Manager upon receipt of a claim or lawsuit relating to the Network. The Administrative Manager shall take the lead role on behalf of the TRWC in coordinating the investigation and defense of any claim or lawsuit made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Nothing in this section shall preclude any Party, at its expense, from providing its own legal counsel in connection with any claim or lawsuit made in connection with planning, designing, constructing, operating, maintaining or financing the Network. Claims and lawsuits include any claims, losses, liability, costs, or expenses (including reasonable attorneys fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage.

4.5. The Administrative Manager subject to Board of Directors approval may apply for such federal, state or other grants as are made available for the planning, designing, constructing, operating, maintaining and financing the Network. The Administrative Manager may submit the grant application on behalf of the TRWC in accordance with applicable laws, rules, regulations and procedures. Any grant funds received will be used to reduce the cost of the project for which a grant application was submitted. The application for or the award of a grant shall not relieve a Party of its obligation to pay costs billed by the TRWC as provided in this Agreement.

4.6. Any Party that intends to individually submit a grant application that may benefit the TRWC or the Network shall first submit its proposal and grant application to the TRWC for its recommendation. With approval of the Board of Directors, the Party may submit its application to obtain the grant funding. Acceptance and use of any grant funds so obtained for the TRWC and the Network is subject to the discretion and approval of the Board of Directors. A Party who applies for, is awarded, and accepts grant funds under this paragraph 4.6 is individually responsible for meeting all terms, conditions and obligations of the grant.

4.7. The TRWC's Board of Directors shall adopt procurement procedures.

4.8. The TRWC's Board of Directors shall determine what insurance coverage is appropriate to protect the Parties from risks concerning the TRWC and the Network. The Board of Directors shall obtain such insurance on behalf of the TRWC. In deciding what insurance coverage and indemnities are appropriate, the Board of Directors may elect to self-insure for all or a portion of the risks.

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

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

6. Voluntary Termination or Withdrawal as Members. Any Party may voluntarily terminate its participation in the TRWC by providing twenty-four (24) months' prior written notice to the other Parties and complies with the requirements of Section 10.5 and any other provision of the Governance Agreement that addresses voluntary termination or withdrawal from the TRWC.

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

8. Failure to Pay Financial Obligation.

8.1. If a Party is relieved from payment of its financial obligation to the TRWC as a matter of law, then the TRWC may suspend the Party's right to vote and participate in the affairs of the TRWC 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. All other obligations of the Party shall remain in effect, except for obligations specifically excused as a matter of law.

8.2. Except as provided in paragraph 8.1, if a Party fails to pay a financial obligation within thirty (30) days of the invoice date and then, upon notice by the Administrative Manager of the deficiency, fails to cure the non-payment within thirty (30) days of the date of the deficiency notice, the TRWC shall suspend the Party's right to vote and participate in the affairs of the TRWC 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. All other obligations of the Party shall remain in effect, except for obligations specifically excused as a matter of law.

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

10. Records; Confidentiality.

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

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

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

10.4. To the extent permitted by law, the Parties shall treat Network information as proprietary and confidential. Network information includes, but is not limited to, technical data, engineering details, construction documents, equipment lists, programming configurations, and operational procedures. Any Party who receives a request for information or a public records request concerning the Network shall promptly forward the request to the Administrative Manager for consideration and response.

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 other governments with jurisdiction over the Party 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 the performance of this Agreement. Nothing in this Agreement shall be construed or interpreted to require the TRWC 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 jointly and cooperatively defend the validity of this Agreement.

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

14. Amendment.

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

14.2. This Agreement and the Governance Agreement may be amended by one of the following two procedures:

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14.2.1. TRWC-Legislative Procedure. A proposed amendment to this Agreement including the Governance Agreement attached as Exhibit A shall be submitted for approval to the TRWC's Board of Directors. Upon approval of the Board of Directors in accordance with the voting process set forth in the Governance Agreement, each Party shall take appropriate steps in conformity with state and local law to authorize and approve the proposed amendment.

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

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

15. Existing and Future Agreements.

15.1. 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 Network.

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

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

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

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

15.4.2. To prohibit a Party from entering into separate agreements after the Effective Date of this Agreement concerning real estate, buildings and structures, and towers that the Party owns, leases, or licenses and that the Party authorizes and allows the TRWC to use as part of the Network, provided the separate agreements are consistent with this Agreement and compatible with the TRWC's use of the property for the Network.

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

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15.5. This Agreement is entered into for the sole and exclusive benefit of the Parties, and no other person shall claim any implied right, benefit or interest in this Agreement. The Parties do not intend to create rights in or remedies to any third party as a beneficiary of this Agreement or of any duty, obligation, or undertaking established under this Agreement.

16. Notices.

16.1. Any notice, consent or other communications ("Notice") required or permitted under this Agreement shall be in writing and either delivered in person, or, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or express service addressed with confirmed receipt to the addresses of each Member that are on file with the Executive Director.

16.2. If mailed as provided in Section 16.1 of this Agreement, notice shall be deemed received five (5) days after the Notice is deposited in the U.S. mail as provided above. If delivered as provided in Section 16.1 of this Agreement, Notices shall be deemed received at the time it is personally served, on the day received as confirmed by any commercial air courier or express services. Any time period stated in a Notice shall be computed from the time the Notice is deemed received. A Party may change its mailing address or the person to receive Notice by notifying the Executive Director and the other parties as provided in this paragraph.

17. Default and Cure; Alternative Dispute Resolution.

17.1. Each Party agrees that it will perform all duties and obligations agreed to be performed by it under the terms and conditions of this Agreement, and that the unexcused failure of the Party to perform its duties and obligations shall constitute a default under this Agreement. In the event of a 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, but may do so under protest. The protest shall be in writing, and shall precede the performance of the disputed obligation, and shall specify the reasons upon which the protest is based. After performance of the disputed obligation under protest, the Party disputing the asserted default shall have the right to submit the dispute to the TRWC's Board of Directors for a recommendation on a non-binding resolution under paragraph 17.3.

17.2. Notwithstanding the provisions of paragraph 17.1, in the event a Member disputes an amount billed, it shall do so in writing to the Executive Director within six (6) months after the invoice date or within sixty (60) days of the end of the fiscal year in which the invoice was issued, whichever is earlier. 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 17.3. Payments not made under protest shall be deemed to be correct. If a protest is not filed within the earlier of six (6) months after the invoice date or within sixty (60) days of the end of the fiscal year in which the invoice was issued, the Member waives its right to file a protest.

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

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

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

17.6. In the event a dispute is not resolved pursuant to paragraph 17.3, the Parties agree to use arbitration to the extent required under A.R.S. § 12-133 and A.R.S. § 12-1518.

18. 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.

19. Performance and Uncontrollable Events.

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

19.2. No Party shall be considered to be in default in the performance of any obligations under this Agreement (other than obligations of a Party to pay costs and expenses) if failure of performance is due to an uncontrollable event. The term "uncontrollable event" means any cause beyond the control of the Party affected, including but not limited to flood, earthquake, storm, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, and action or non-action by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority or the electorate, 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.

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19.3. If any Party claims that its failure to perform was due to an uncontrollable event, the Party shall bear the burden of proof that such activity was within the meaning and intent of this section, if such claim is disputed by any Party to this Agreement.

20. 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; provided, however, that nothing shall relieve any Party of any obligation under this Agreement, except upon the express written consent of the other Parties.

21. Entire Agreement. This Agreement, including the Governance Agreement, contains the entire agreement and understanding among the parties regarding the formation, governance and operations of the TRWC, and supersedes and replaces all related prior negotiations, agreements and proposed agreements, written or oral. Each Party acknowledges that no other Party, nor any agent or attorney of any Party, has made any promise, representation, or warranty whatsoever, expressed or implied, not contained in this Agreement and acknowledges that this Agreement has not been executed in reliance on any promise, representation or warranty not contained in this Agreement. This Agreement shall not be amended, modified or supplemented at any time unless in writing.

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts executed and intended to be performed entirely within the State of Arizona by residents of the State of Arizona. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision therefore shall be instituted only in the courts of Maricopa County, Arizona.

23. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, the provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the Parties to obtain the practical benefits of the Network. If any law or court of competent jurisdiction prohibits or excuses any Party from undertaking any contractual commitment to perform any act under this Agreement, this Agreement shall remain in full force and effect, but the provisions requiring such action shall be deemed to permit the Party to take such action at its discretion, if such a construction is permitted by law. This section shall not limit the discretion of the Parties to suspend a Party's right to vote and participate in the affairs of the TRWC as provided in Section 8, entitled Failure To Pay Financial Obligation.

24. 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.

25. Counterparts. This Agreement 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.

[Signatures on following pages]

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

TOWN OF GILBERT

Date: _____

By _____
Town Manager

Printed Name

ATTEST:

Town Clerk

Printed Name

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

Town Attorney

Printed Name

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

CITY OF MESA

Date: _____

By _____
City Manager

Printed Name

ATTEST:

City Clerk

Printed Name

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

City Attorney

Printed Name

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TOWN OF QUEEN CREEK

Date: _____

By _____
Town Manager

Printed Name

ATTEST:

Town Clerk

Printed Name

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

Town Attorney

Printed Name

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

APACHE JUNCTION FIRE DISTRICT

Date: _____

By _____

Board Chair

Printed Name

ATTEST:

Board Clerk

Printed Name

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

Attorney for the Board

Printed Name

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

CITY OF APACHE JUNCTION

Date: _____

By _____
City Manager

Printed Name

ATTEST:

City Clerk

Printed Name

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

City Attorney

Printed Name

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RIO VERDE FIRE DISTRICT

Date: _____

By _____

Its: _____

Printed Name

ATTEST:

Board of Directors, Clerk

Printed Name

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

County Attorney

Printed Name